
(2014) 04 P&H CK 0254

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 6565 of 1991 and 8600 of 2000 [O and M]

Sanjay Malhotra

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Constitution of India, 1950 — Article 21

Land Acquisition Act, 1894 — Section 11, 11-A, 4, 5-A, 6

Citation : (2014) 3 RCR(Civil) 547

Hon'ble Judges : Surya Kant, J;Amol Rattan Singh, J

Bench : Division Bench

Advocate : Rajiv Atma Ram, Sr. Advocate, Simarjit Singh Beniwal and Adarsh Jain, Advocate for the Appellant; Indrish Goel, Additional AG, Haryana, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Surya Kant, J.—This order shall dispose of CWP Nos. 6565 of 1991 and 8600 of 2000 as both the writ petitions have been preferred by the same set of petitioners, who impugn two different acquisition proceedings insofar as the same pertain to acquisition of their land by the State of Haryana. Since some of the issues are over-lapping, we propose to decide both the cases together. For better appreciation of the controversy, the facts of both the cases are noticed separately. CWP No. 6565 of 1991:-

Petitioners No. 1 and 2 are brothers, while petitioner No. 3 is their mother. They impugn the notifications dated 20th August, 1980 and 13th July, 1982 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 [in short "the Act"] as also the notice u/s 9 issued in April, 1991 asking them to appear and file their objections, if any, on 03rd May, 1991 in respect of assessment of compensation for their acquired land comprising Khasra Nos. 121//19/1, 22, 26 situated in the revenue estate of village Jagadhri, Tehsil Jagadhri, District Yamuna Nagar.

2. The petitioners' case is that they are running a factory in the name of Maurya

Timbers in the Industrial Area, Yamuna Nagar where various types of wooden articles are manufactured. The factory is located in Khasra Nos. 242 and 243 which are not under acquisition, however, they had purchased the land under acquisition for an approach to their factory premises.

3. It appears that Khasra Nos. 242 and 243 where the factory was set up, were also proposed to be acquired vide notification dated 20th August, 1980 issued under Sections 4 of the Act, but on consideration of the objections and a request made by the father of petitioners No. 1 and 2, the State Government vide Memo dated 30th March, 1982 decided to release the above stated two Khasra Numbers, subject to the condition that the owner would enter into an agreement for payment of proportionate development charges and take requisite permission to raise the construction as per the approved plan. The agreement [P-6] was accordingly executed and the land measuring 12 Bighas 4 Biswas comprising the above mentioned two Khasra Numbers was exempted from acquisition. The petitioners claim that much before the initiation of acquisition process they had entered into an agreement to purchase the subject-land as they needed it for access to their released land where the factory had been set up. However, the sale deed [P-7] was executed on 07th April, 1981, i.e., after the issuance of Section 4 notification dated 20th August, 1980.

4. The petitioners' further case is that though the subject acquisition was unsuccessfully challenged before this Court by various owners but they never filed any writ petition or Letters Patent Appeal. They received the first notice u/s 9 in December, 1990 informing them that the Land Acquisition Collector was proposing to pronounce the Award on 3rd May, 1991.

5. The above stated acquisition, according to the petitioners, is bad in law for the reasons like: [i] the time period to pass the Award had elapsed; [ii] they needed the land for bona-fide use for access to their factory; [iii] the subject land deserved to be released in the same manner as their land under factory had been released; [iv] the acquisition was discriminatory as the vacant land of various influential persons mentioned in Para No. 10 of the writ petition, had been released; [v] the acquisition is an abuse of power of eminent domain as successive efforts have been made to acquire the subject land since the year 1969; and [vi] during the interregnum the Land Acquisition Act, 1894 stood amended w.e.f. 24th September, 1984, therefore also the old proceedings had lapsed and that [vii] the notice u/s 9 issued belatedly was patently illegal.

6. The Land Acquisition Collector, Urban Estates, Panchkula has filed written statement on behalf of respondents No. 1 and 3. One of the preliminary objection is that the subject acquisition was challenged by various landowners/interested persons in CWP No. 3799 of 1982 in which vide an interim order dated 03rd September, 1982 the pronouncement of the Award was stayed. The writ petition was finally dismissed on 26th April, 1985 [R-1]. The landowners challenged that decision in LPA No. 889 of 1985 which was admitted on 9th July, 1985 and further proceedings were stayed. That appeal was finally dismissed on 16th

November, 1990 [R-3]. Immediate thereafter, notices u/s 9 were issued to the landowners/interested persons to submit their objections, if any, against the proposed award. It is, thus, maintained that after excluding the period from 3rd September, 1982 to 16th November, 1990 when stay orders were in operation, the award has been passed within the prescribed period.

7. Questioning the petitioners' locus-standi to challenge the subject acquisition, the respondents have explained that they purchased a part of the land comprising Khasra No. 121/26, 19 and 22 after the publication of notification u/s 4 on 20th August, 1980. The acquisition of that Khasra Number was also under challenge in CWP No. 3799 of 1982 or LPA No. 889 of 1985 on similar grounds, which were dismissed by this Court.

8. As regard to the petitioners' plea that they had purchased the subject land for the construction of approach road to their factory, the respondents have taken the following categorical stand in para No. 4 of their reply on merits:-

"4. That the contents of Para No. 4 of the writ petition are wrong, hence denied. It is further submitted that approach road will be provided to the release land/factory of the petitioners in the layout plan of the sector. One side of the factory/land of the petitioners falls on 18 metre wide road and other on 9 meter wide road and on the third side road comes up to the land/factory [released] of the petitioners. Position explained in preliminary objection No. 1 may please be read as part and parcel of reply of this para".

CWP No. 8600 of 2000:

9. The same set of petitioners, namely, the two brothers and their mother assail the notifications dated 4th June, 1997 and 2nd June, 1998 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 as well as the order dated 29th June, 2000 [Annexure P-16] passed by the Director, Urban Estates, Haryana, rejecting their representation for the release of the acquired land. Vide the above stated notifications, State of Haryana had acquired the land comprised in Khasra Nos. 242 and 243 situated in Garhi Mondan, Tehsil Jagadhri, District Yamuna Nagar measuring 12 Bighas 4 Biswas [namely, the land referred to as the Factory premises in the previous case].

10. The petitioners are said to have set up the factory since the year 1980 to manufacture ammunition boxes for Defence Forces and other wooden items. The factory land was proposed to be acquired vide notification dated 20th August, 1980 issued u/s 4 of the Act. The petitioners' objections u/s 5-A were accepted and vide Memo dated 16th November, 1991, the father of petitioners No. 1 and 2 was conveyed the Government decision regarding the release of the land of the factory under construction, falling in Khasra Nos. 242 and 243 subject to the terms and conditions including an agreement to be executed by the landowner [s] agreeing to pay the proportionate development charges etc. Consequently, the land was not included in the declaration published u/s 6 on 13th July, 1982.

11. The landowner[s] appears to have requested the authorities to intimate to them the development charges for the released land as also to approve the building plan of the factory. However, instead of responding to these letters, the State of Haryana issued the impugned notification dated 04th June, 1997 proposing to acquire the land for the development of residential and commercial Sectors 17 and 18 at Jagadhri which included Khasra No. 242 and 243 of Garhi Mondan as well. The petitioners filed their objections u/s 5-A on 1st July, 1997 [P-9] but the same were turned down and the declaration dated 2nd June, 1998 u/s 6 [Annexure P-10] was issued.

12. Even after Section 6 declaration, the petitioners represented to various authorities on 24th March, 1998; 15th April, 1999 and 26th April, 1999 [P-11A to P-11C] for the release of their land. Their claim was recommended by the Estate Officer, HUDA also. Meanwhile, notices u/s 9 of the Act were issued, prompting the petitioners to approach this Court in CWP No. 4223 of 2000 which was disposed of on 24th April, 2000 with a direction to the State Government to take its decision on the above mentioned representations and till such decision, proceedings regarding acquisition of the petitioners' land were stayed.

13. It was pursuant to the above mentioned directions that the impugned order dated 29th June, 2000 [P-16] rejecting the petitioners' claim for the release of their land was passed.

14. The notifications issued under Sections 4 and 6 are under challenge in this petition in which vide order dated 14th July, 2000 it was directed that "status-quo regarding possession shall be maintained till further orders".

15. No written statement has been filed by the respondents.

ISSUES ARISING IN CWP NO. 6565 OF 1991:-

16. The petitioners' principal contention is that no award has been passed within the statutory period of two years as mandated by Section 11-A of the Act, hence the acquisition has lapsed; that the land under acquisition measuring 15 marlas was purchased as it was needed by them for accessing their factory; there is no element of public purpose behind the impugned acquisition; the petitioners have been discriminated against in the matter of release of the land.

17. Having given our thoughtful consideration to the rival submissions, we are of the considered view that the instant writ petition must fail for more than one reason. Firstly, the petitioners purchased the acquired land after the issue of Section 4 notification and applying the principles laid down by the Supreme Court in [i] Smt. Sneh Prabha etc. Vs. State of U.P. and Another, ; [ii] Ajay Krishan Shinghal, etc. etc. Vs. Union of India and Others, and [iii] Meera Sahni Vs. Lt. Governor of Delhi and Others, their writ petition deserves dismissal on this account alone. Secondly, no objections u/s 5-A were filed by the petitioners and they have chosen to approach the Court at the stage of issuance of notice u/s 9 of the Act. Thirdly, the subject acquisition has already been upheld by this Court

vide well reasoned judgments dated 26th April, 1985 [Single Bench] and dated 16th November, 1990 [by the Letters Patent Bench]. Fourthly, the so-called bona-fide necessity of the petitioners, namely, to utilise the acquired land for construction of approach road stands falsified by the fact that the respondents in their written statement have categorically pleaded that there is an approach road provided to the petitioners' factory as per the layout plan of the area.

18. Adverting to the plea that the Award has not been passed within the prescribed statutory period, it may be useful to reproduce Section 11-A of the Act which came to be introduced by Act No. 68 of 1984 w.e.f. 24th September, 1984. It reads as follows:-

"11-A. Period within which an award shall be made.- The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse.

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition [Amendment] Act, 1984 [68 of 1984], the award shall be made within a period of two years from such commencement. Explanation: In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court shall be excluded".

19. Assuming that the amended Section 11-A applies in the instant case, the Explanation as reproduced above unequivocally says that the period during which the proceedings were stayed by an order of Court shall stand excluded for completing the period of two years. In the instant case, the respondents have rightly explained that the Award could not be passed as the stay order remained operative from 03rd September, 1982 to 16th November, 1990. Once the said period is excluded, the Award in the instant case falls within two years from the date of publication of declaration u/s 6 of the Act.

20. Having held that, we need not go into the question as to whether the proviso to Section 11-A inserted vide Act No. 68 of 1984 is attracted in the instant case or that the newly added provision is prospective only?

21. For the reasons afore-stated, CWP No. 6565 of 1991 must fail and is accordingly dismissed.

CWP No. 8600 of 2000:

22. Learned Senior Counsel for the petitioners vehemently contended that the impugned acquisition of the year 1997-98 deserves to be annulled on more than one ground including that:

[i] the acquisition proceedings have lapsed for the reason that no award has been passed by the Land Acquisition Collector who failed to pass the Award till date without any legal impediment. Vide interim order dated 14th July, 2000, this

Court had merely directed the respondents to maintain "status-quo regarding possession", hence there was no embargo against the passing of the award.

[ii] the acquired land was earlier released by the State Government taking a conscious decision and since the father of petitioner Nos. 1 and 2 or the petitioners themselves have complied with those terms and conditions and have always been willing to pay the development charges, there is no rhyme or reason left for the State to re-acquire the land.

[iii] the acquisition is for residential, commercial and industrial development and the petitioners too have set up an industrial unit, hence the subject land is already under use for the same public purpose;

[iv] the factory is the only source of livelihood of the petitioners and its acquisition amounts to violation of Article 21 of the Constitution;

[v] as no award has been passed till date, the provisions of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, need to be followed, if need be.

23. In the absence of any written statement the case was adjourned to enable the State Counsel to have specific instructions as to whether or not the Award has been passed?

24. The Director General, Urban Estates, Haryana vide his Memo No. 1946 dated 28th February, 2014 has informed the Advocate General, Haryana to the following effect:-

"The matter has been referred to HUDA for examination and report. It has been reported that the pocket in question marked as "A" on the part layout plan of Sector 17, Jagadhri from part of the commercial belt/parking reserved in the layout plan of Sector 17, This land was earlier released and was subsequently acquired again. Since, it is situated adjacent to the land under litigation [CWP No. 6565 of 1991 and 8600 of 2000], its detailing has not yet been done. However, as per sector layout, the pocket "A" is also to be utilised for commercial belt/parking.

3. Regarding award in CWP No. 8600 of 2000, it is to inform that award in respect of the land pertaining to it, has not been announced.

The above report is submitted for kind perusal and it may be apprised to the Hon"ble High Court. The case is listed for hearing on 04.03.2014".

[Emphasis applied]

25. Learned State Counsel, however, vehemently contended that the Explanation attached to proviso to Section 11-A of the 1894 Act fully absolves the respondents and in the facts and circumstances of the instant case, when the interim order is still operative, the entire period of stay has to be excluded for computing the period of two years.

26. On consideration of the rival submissions, we find that the following two questions do arise for determination in this case:-

[i] Whether the acquisition proceedings have lapsed due to non-passing of the award within the prescribed period of two years?

[ii] Whether the acquisition of the subject-land is justified and is for a bona-fide public purpose?

Question No. [i]:-

27. It may be seen from the plain reading of Section 11-A, as reproduced in Para No. 19 of this order, that the main provision has been inserted for the benefit of affected landowners whereby the Collector has been obligated to pass the award within a period of two years from the date of publication of the notification u/s 6 of the Act, failing which the entire proceedings for the acquisition would lapse. The Explanation to the proviso, however, says that "the period during which any action or proceedings to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded", while computing the above stated period of two years.

28. The true import and meaning of the Explanation attached to Section 11-A was considered by the Hon"ble Supreme Court in Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another, In that case also, the landowner had obtained interim relief by restraining the State of Gujarat from taking possession of the acquired land. The question that came up for consideration was: whether the period during which the restraint order was operative, was liable to be excluded for computing the period for passing the award and the same has been answered by saying that:-

"8. The said Explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action or proceedings referred to in the Explanation to actions or proceedings preceding the making of the award u/s 11 of the Act.....On the other hand, it appears to us that the Section 11-A is intended to confer a benefit on a landholder whose land is acquired after the declaration u/s 6 is made in cases covered by the Explanation. The benefit is that the award must be made within a period of two years of the declaration, failing which the acquisition proceedings would lapse and the land would revert to the landholder. In order to get the benefit of the said provision what is required, is that the landholder who seeks the benefit must not have obtained any order from a court restraining any action or proceeding in pursuance of the declaration u/s 6 of the said Act so that the Explanation covers only the cases of those landholders who do not obtain any order from a Court which would delay or prevent the making of the award or taking possession of the land acquired".

29. Following Yusufbhai Noormohmed Nendoliya's case [supra] the Hon"ble Supreme Court in Government of Tamil Nadu and another Vs. Vasantha Bai, reiterated that the stay of dispossession of the landowner tantamounts to the

stay of further proceedings being taken, within the meaning of Explanation to Section 11-A and the period during which such interim order operates has to be excluded for the purpose of passing the award. In *M. Ramalinga Thevar Vs. State of Tamil Nadu and Others*, also, it was re-stated that "even when dispossession alone is stayed by the Court the period during which such stay operates would stand excluded from the time fixed for passing the award, the expiry of which would render the acquisition proceedings lapsed. In the light of the said interpretation it is now idle to contend that the Government is debarred from proceeding with the acquisition".

30. In *R. Kolandaivelu and Others Vs. The Govt. of Tamil Nadu and Another*, , also the acquisition under the 1894 Act was challenged and at the time of admission of the writ petitions, an interim order was passed. On an application moved by the State for vacating the interim order, the High Court on 3rd July, 1991 passed the order prohibiting the dispossession of the landowners from the acquired land pending further orders. The question that arose for consideration was whether the period during which the order dated 3rd July, 1991 remained operative was to be excluded for the purposes of Section 11-A. The Apex Court ruled that:-

"17. In view of our discussions made here-in-above and considering the nature of interim order of stay passed by the High Court finally on 3.7.1991, it is abundantly clear that both the parties proceeded on the basis that the interim order of stay had been continuing and the respondents were prohibited from dispossession the appellants from the acquired lands pending further orders. If that was not the case, the question of filing an application for vacating the order of stay granted in favour of the appellants could not arise at all and there was no occasion for the appellants to contest the application for vacating the stay order on the basis that the interim order of stay was continuing and should be allowed to continue. That apart, it may be stated that although initially the interim order was passed for four weeks, the same interim order which was granted initially was made final until further orders on 3.7.1991.

18. From the above narration of facts, it must be held that no steps could be taken in view of the pending applications for grant of interim order and in view of the interim order granted pending further orders. Therefore, it can not be said that the acquisition proceedings had lapsed due to expiry of two years from the date of publication of the declaration u/s 6 of the Act relating to the acquired lands".

31. It is undeniable that Section 6 notification was issued on 2nd June, 1998 and much before the expiry of two years" period, the petitioners filed CWP No. 4223 of 2000 which was disposed of on 25th April, 2000 with a direction to the State to take a decision on the petitioners' representations for the release of land and till such decision, "the proceedings with regard to acquisition of the land of the petitioners" were stayed. The representations of the petitioners were rejected on 29th June, 2000 but on July 14, 2000, this Court again directed to maintain the

status-quo regarding possession. The said interim order is operative till date. The period w.e.f. 25th April, 2000 to 29th June, 2000 and again from July 14, 2000 onwards, thus, has to be excluded for computation of two years' period u/s 11-A of the 1894 Act. The petitioners' first contention that the acquisition proceedings have lapsed for want of an award within the two years, thus, merits rejection.

32. Having answered Question No. [i] above, the petitioners' contention regarding the applicability of 2013 Act is also devoid of any merit.

Question No. [ii]:-

33. It goes without saying that the Sector 17, Urban Estate at Jagadhri has been developed by the State agency, namely, HUDA. The said Sector is predominantly a residential sector but to cater to the day-to-day needs of its residents, the commercial belts, adjoining main roads etc., have also been planned. It is evident from the layout plan that the major part of the petitioners' land which is the subject matter of CWP No. 6565 of 1991 is required for the construction of road[s], parking and some commercial sites. Similarly, the major chunk of the land where the petitioners had set up the factory [which is now lying defunct for the past several years] is also mainly proposed to be utilised for the construction of roads, the commercial and residential sites. The acquired land, if released, would disturb the planned development of the area. It can not, thus, be said that the acquisition has not been made for a genuine public purpose.

34. It is true that after the previous acquisition of 1980-82, the factory site of the petitioners was released from acquisition. It is, however, equally pertinent that the entire area has now been developed essentially as a residential sector, though with ancillary commercial activities as well. In such a situation, the decision taken by the respondents to acquire the factory site or to develop the land in a regulated manner for the notified public purpose, can not be faulted with. The Respondents' contention that industrial activities particularly of Wood Industry can not be allowed to operate in a residential area, carries a lot of weight. We have, thus, no hesitation to hold that the subject acquisition is meant to achieve a bona-fide public purpose and keeping in view the environmental issues, allowing to run a factory, surrounded by residential area may not be expedient. Issue No. [ii] also stands answered accordingly.

35. Having held that, we are also conscious of the fact that the contention No. [iv] of the petitioners, namely, right to sustenance requires a dispassionate, equitable and sympathetic consideration at the hands of the authorities. In a situation like this where due to rapid urbanisation the residential areas have expanded and engulfed the isolated or scattered industrial units [and not a reverse case where industry is installed in a residential area], this Court has viewed that the payment of compensation alone may not provide any solace. The national or State's policies on Rehabilitation and Resettlement also voice such concerns. It thus becomes imperative for a Constitutional Court to find an effective modicum which may minimise the hardship fallen on the affected

landowner and/or his family. Such a recourse is further necessitated where the current user of the acquired property is not in conformity with the zoning or layout plans notified for the regulated development of the area.

36. In CWP No. 5778 of 1999 *M/s Kaushik Surgical Industries v. State of Haryana & Ors.*, decided on 10th January, 2014, also a Small Scale Industrial Unit was firstly exempted from acquisition but residential Sector 10-A, Gurgaon was subsequently developed in its surroundings. The factory site was re-acquired for the development of the commercial belt of the said Sector 10-A. Since the acquisition was to enrich the State Agency through the auctioning of commercial sites with the resultant closure of the Small Scale Industrial unit, this Court held as follows:-

"(31) The mere payment of compensation is not the only effective solace to a person who is being deprived of his source of livelihood as well as the social security of a residential house. The petitioner may not be able to buy even a single room accommodation on payment of the so-called compensation amount to be offered by the respondents. It was after realizing this extreme hardship that the policy decision was taken which the respondents are reluctant to implement perceiving that the petitioner would be unduly enriched if the commercial sites were allotted to its proprietor. The same reason, however, the respondents have failed to apply to themselves. The action of the respondents thus is totally unfair, unjust and per-se arbitrary.

(32) For the reasons afore-stated, we allow this writ petition in part and taking into consideration the totality of the circumstances and the fact that one site would be reasonable enough to earn livelihood, we direct the respondents to release the petitioner's acquired land equivalent in dimensions to the shop-cum-office site in Sector 10A i.e. SCO No. 13 or 14 subject to, however, the condition that the petitioner shall utilize the said site conforming to the notified zone and shall not run any industrial unit nor shall use the same for residential purpose. The petitioner shall also be liable to pay development charges for the released site of one of the SCO but nothing more than that. The acquisition qua the petitioner's remaining land is upheld. It is, however, directed that the petitioner shall not be dispossessed of the acquired land till the release order as directed above is passed".

37. Following the cited instance and the principles discussed therein, it appears to be just, fair and equitable to direct the respondent authorities to release the land of the petitioners equivalent to the size of two commercial sites [SCOs], subject to their depositing the proportionate development charges. The said two commercial sites shall be released out of the petitioners' acquired land. After excluding the land to the extent it stands released for two commercial sites, the petitioners shall be entitled to compensation for the remaining acquired land. We have issued these directions with a view to provide the petitioners an alternative source of livelihood in conformity with the zoning of Sector 17, Jagadhri. The needful in this regard shall be done within a period of three months from the

date of receipt of a certified copy of this order. The acquisition qua the remaining land of the petitioners is, thus, upheld. The instant writ petition stands allowed in part in the above terms. Disposed of. Dasti.