
(2010) 01 P&H CK 0115
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6557 of 2009

Sanjeev Kumar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

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

Citation : (2010) 5 RCR(Civil) 811

Hon'ble Judges : M.M.Kumar, J and Jitendra Chauhan, J

Judgement

M.M.Kumar, J.—This order shall dispose of bunch of four petitions bearing CWP Nos. 21621 of 2008, 6557, 2482 and 6952 of 2009 as acquisition proceedings have been initiated by the common notifications which are subject matter of challenge. In all the petitions, the prayer made is for quashing notification dated 5.3.2008 (P.1) issued under Section 4 of the Land Acquisition Act, 1894 (for brevity "the Act") and declaration dated 6.11.2008 (P.2) issued under Section 6 of the Act. The purpose of acquisition is to extend the grain market which had a sub yard at Jhansa, Tehsil Ismailabad, District Kurukshetra. It is pertinent to mention that earlier on 27.11.2006 (P.3) the same land was sought to be acquired but the earlier notification lapsed and acquisition proceedings were dropped. Thereafter fresh acquisition proceedings were initiated by issuing notifications dated 5.3.2008 and 6.11.2008 (P.1 and P.2.).

2 Facts necessary for disposal of the controversy raised are being taken from CWP No. 6557 of 2009. By initiation of acquisition proceedings land measuring 17 acres, 2 kanals and 12 marks for extension of the sub yard at Jhansa was sought to be acquired (P. 1 and P.2). Earlier notification dated 27.11.2006 for acquiring the same land had expired and only 4 kanal of land could be acquired (P.3). The petitioners have alleged that earlier in 1981 land measuring 37 acres was acquired for developing a mandi/market yard at village Ajrana (Kurukshetra) on the request of Haryana State Agricultural Marketing Boardrespondent No. 3 (for brevity "the Board). A large population living within 5 kms. radius of the

market yard have been its beneficiary. The purpose of establishing the mandi was to facilitate farmers to sell and store their produce to get its maximum price. Even licences were issued to different commission agents numbering about 7075 under the Punjab Agriculture Produce Market Act, 1961 (as applicable to Haryana (for brevity "the Market Act")). The shops were constructed and auctioned to the licensee. Some of the petitioners are owner in possession of the land which is subject matter of acquisition as is evident from the revenue record (P.4 and P.5). In some of the petitions it has been urged that earlier a notification under Section 4 of the Act was issued on 27.11.2006 (P.3) and that a corrigendum dated 4.7.2007 (P.6) was also issued. However, it lapsed and acquisition proceedings were not completed (R. 1). Their land was not subject matter of acquisition which has been included in the subsequent impugned notification. Same land has also not been included which was earlier intended to acquire.

3 In the written statement filed by the State the broad factual position has not been disputed. It has been pointed out in para 2 of the preliminary submissions that earlier CWP No. 21500 of 2008 (Hazoor Singh v. State of Haryana) has been dismissed on 31.1.2009 where same notifications were challenged on the ground of existence of Ajrana Mandi. A reference has been made to the objectives of Market Act; which is to create better infrastructure for the sale, purchase, process and storage of "Agriculture Produce". Under Section 34 of the Market Act on the request of a Committee the State may proceed to acquire land under the Act.

4 It has been clarified that Market Committee, Jhansa had established a sub market yard at Jhansa before 1978 which is functional in a small area of four acres. The arrival of agricultural produce and business at Jhansa has increased many folds and the extension was necessary to cope with inflow of the agricultural produce and the requirements of commission agents. Hence, additional land was required.

5 The notifications have been challenged on three grounds. Firstly, it has been submitted that a part of the land which was earlier acquired by issuing notification on 27.11.2006 (P.3) corrigendum dated 4.7.2007 (P.6) is not being acquired by new acquisition proceedings initiated on 5.3.2008 (P.1) and 6.11.2008 (P.2). The reason for not acquiring the aforesaid land as per the site plan (Annexure P.13) is that there are shops constructed on the aforesaid area, which are marked with black ink, are appurtenant to the pucca road leading towards Kurukshetra. The area shown in black ink on the (western) Paschim side of the site plan also have constructed shops but the same have been acquired on the ground that it comes in the middle of the grain market and therefore acquisition is necessary for developing the Mandi. The second ground urged is that already a market yard at a distance of 45 kms. was established at Ajrana Mandi and instead of developing the aforesaid market a wasteful expenditure is being incurred by acquiring the land in question. The shopkeepers at Ajrana Mandi who are running their business therefrom would be uprooted. The

argument is that provisions of Section 8 of the Market Act have been violated which prohibits setting up of any Market Yard within 5 Kms. of existing one. The third argument is that discrimination has been practiced in as much as the shops situated in Khasra No. 129/1 have been released from acquisition whereas the area marked with black ink on the Paschim side of site plan (P.13) have been acquired which is a colorable exercise of power.

6 Per contra learned counsel for respondents have argued that the land is required for public purpose of expanding the existing market yard to achieve the purpose of Market Act of providing facilities of sale and storage of agricultural produce of the farmers. Controverting the arguments of the petitioner, they have submitted that there is no statutory prohibition to set up a market yard within 5 Kms. In any case it has been submitted that it is only expansion of existing Market Yard established before 1978. Learned State counsel have argued that there is no question of discrimination and that acquisition has been carried strictly as per law; objections were heard and decided as per law.

7 Having heard the learned counsel for the parties at a considerable length we find that acquisition of the land is for a public purpose which is within the domain of the respondent state. What area should be acquired and what area should be left out of acquisition is not the concern of the Courts. In order to sustain the allegations of discrimination the Court has to be satisfied that wild discrimination has been practiced. It is not possible to release whole property from acquisition especially when the stand of the State is that property of the petitioner is acquired for development of mandis. For the aforesaid view, we draw support from the following passages of a judgement of Hon"ble the Supreme Court rendered in the case of Anand Buttons v. State of Haryana 2005(1) RCR(Civil) 224 : (2005)9 SCC 164:

"11. This reasoning of the High Court can not be faulted for the simple reason that the authority, who has to carry out the planned development of the industrial estate, is in the best position to judge as to which land can be exempted from the acquisition without jeopardizing the development scheme. It is not possible for the court to sit in appeal over the exercise of such satisfaction by the authority vested with the task of implementing the development plan."

"13. It is trite law that not only land but also structure on land can be acquired under the Act. As to whether in a given set of circumstances certain land should be exempted from acquisition only for the reason that some construction had been carried out, is a matter of policy, and not of law. If after considering all the circumstances, the State Government has taken the view that exemption of the lands of the appellants would render askew the development scheme of the industrial estate, it is not possible for the High Court or this Court to interfere with the satisfaction of the concerned authorities. We see no ground on which the appellants could have maintained that their lands should be exempted from acquisition. Even if three of the parties had been wrongly exempted from acquisition, that gives no right to the appellants to seek similar relief."

8 The other argument that the grain market at Ajrana would not required to be developed has no legs to stand. A feeble attempt was made by the learned counsel for the petitioners by placing reliance on Section 8(2) of the Market Act to argue that no sub market yard could be set up, established or continued within a distance of 5 kms. from the outer limits of such market yard for the purchase and sale of any agricultural produce. The arguments proceeded that since the market yard at Ajrana Kalan is within the prohibited siting para meters, therefore, the acquisition of land for the purpose of extending grain market at Jhansa is wholly violative of the statutory provisions. In order to appreciate the argument, provisions of Section 8 of the Market Act, which is as under:

"Section 8. Control of sale and purchase of Agricultural produces. (1) From the date of issue of notification under section 6 or from such later date as may be specified therein, no person, unless exempted by rules made under this Act, shall either for himself or on behalf of another person or the State Government, within the notified market area set up, establish or continue or allow to be continued any place for the purchase, sale, storage and processing of the agricultural produce or purchase, sale, store or process such agricultural produce except under a licence granted in accordance with the provisions of this Act, the rules and byelaws made thereunder and the conditions specified in the licence.

(2) From the date on which the State Government has, by a notification under section 7, declared any place to be a principal or sub market yard, no person, municipal committee, Panchayat, Panchayat Samiti or any other local authority, notwithstanding anything contained in sub section (1) or in any enactment relating to such municipal committee, Panchayat Samiti, Panchayat or local authority, shall be competent to set up, establish or continue or allow to be continued any place within a distance of five kilometers from the outer limits of such market yard for the purchase and sale of any agricultural produce; Provided that nothing herein contained shall apply to the sale of agricultural produce stored in a coldstorage or processed and kept in a factory."

9 A perusal of the aforesaid provision shows that prohibition to establish market yard for the purchase and sale of any agricultural produce has been imposed on other agencies and bodies like Municipal Committee, Panchayat Samitis, Panchayat or local authorities and not on the State Government to establish any other sub market yard or principal yard. There is no support to the argument from the aforesaid provision. Moreover in the present case the existing market yard is sought to be extended and no new yard or mandi is sought to be established. The argument does not flow from Section 8(2) of the Market Act. Accordingly we have no he sitation to reject the same.

10 The third argument that shops shown on the western side of the site plan in black ink are required to be released from acquisition which was not earlier acquired has also failed to impress us. It is not in dispute that the western side land is being developed as a grain market and if the land shown in black ink on the western side is not acquired then it would adversely affect the planned

development which is the stand of the respondents in their written statement. We find no substance in this argument and reject the same. For the reasons aforesaid we are not inclined to admit these petitions and the same are dismissed in limine. A copy of this order be placed on the file of connected cases. Petition dismissed.