
(2009) 11 P&H CK 0126
In the Punjab And Haryana At Chandigarh

Sant Ram and Bal Kishan

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 27-11-2009

Acts Referred:

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

Citation : (2010) 157 PLR 217

Hon'ble Judges : Mehinder Singh Sullar, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—Having lost the legal battle in two rounds of previous litigations, the petitioners have again challenged the same acquisition proceedings and impugned recommendation (Annexure P19) of the High Powered Committee (hereinafter to be referred as "the Committee") in the present third writ petition, invoking the provisions of Articles 226/227 of the Constitution of India.

2. The matrix of the facts culminating in the commencement, relevant for disposal, of present writ petition and emanating from the record, is that the State of Haryana issued, a preliminary notification dated 15.11.2002 (Annexure P3) u/s 4 of the Land Acquisition Act, 1894 (hereinafter to be referred as "the Act") and sought to acquire the land of the petitioners alongwith other land mentioned therein situated in villages Begampur Khatola, Narsinghpur and Khandsa, Tehsil and District Gurgaon, at public expense for public purpose, namely, for the development of integrated complex for industrial, institutional, commercial, recreational and other public utilities. According to the petitioners, they submitted objections dated 19.12.2002 (Annexure P4) u/s 5-A of the Act, but the respondents did not consider the same and issued declaration/notification dated 12.11.2003 (Annexure P5) u/s 6 of the Act.

3. The petitioners have earlier challenged the same acquisition proceedings by

filing CWP No. 19733 of 2004, which came up for hearing on 13.1.2006. Counsel for the parties were ad idem that as the petitioners were willing to submit their representations, the petition be disposed of in view of judgment tendered in CWP No. 4271 of 2004 on 16.7.2005, vide which, the Government of Haryana has constituted a Committee to examine the cases of the parties/affected persons pursuant to the notification, which was under challenge in that writ petition. In the wake of the stand of counsel for the petitioners, the writ petition was disposed of vide order dated 13.1.2006 (Annexure P6). However, petitioners were permitted to submit their representations within a period of fifteen days before the Committee, which shall go into the matter, as expeditiously as possible, and they be not dispossessed from the land in dispute till the decision is rendered by the aforesaid Committee and further fifteen days" time was granted to the petitioners to avail their remedy,

4. As a sequel and in pursuance of the order (Annexure P6), the petitioners filed the representation dated 8.2.2006 (Annexure P7) before the Committee, subsequent to the passing of the award on 18.11.2005.

5. The petitioners claimed that instead of deciding their representation, award No. 2 of 2004-2005 (Annexure P10) was passed by the Collector on 18.11.2005 and had proceeded to take possession of the acquired land. Therefore, the petitioners filed another CWP No. 13442 of 2007, which came to be disposed of on 28.8.2007 and the following order (Annexure P12) was passed by this Court:

Learned Counsel submitted that for the present petitioners would be satisfied if the writ petition is disposed of with a direction to concerned authorities to consider and decide their pending representation Annexure P-8 to this writ petition, if not already decided. Accordingly, we disposed of the writ petition with direction to the authorities concerned to disposed of the representation (Annexure P-8) on merit within a period of four weeks from the date of receipt of a copy of this order.

6. As soon as the petitioners filed COCP No. 607 of 2008 then the respondents proceeded to decide their representation. The petitioners were stated to have filed another representation dated 23.1.2009 (Annexure P16) in the prescribed proforma. Subsequently, their representations were stated to have been decided/rejected by the Committee vide impugned report dated 24.1.2009 (Annexure P19).

7. Levelling a variety of allegations, in all, according to the petitioners that although their houses are situated on the approach road and they have fulfilled the criteria for releasing their land, but still their representations were wrongly rejected on non-existence and discriminatory grounds. On the basis of aforesaid allegations, the petitioners have challenged the same acquisition and order (Annexure P19) in the present third writ petition, mainly on the grounds of arbitrariness, without jurisdiction and in violation of the provisions of the Act.

8. Admittedly, the various representations of the landowners, including the

present petitioners, were decided by the Committee vide impugned order (Annexure P19). The relevant operative part (at Serial No. 6) pertaining to the land of the petitioners is in the following manner:

Sr. No. 6 CWP No. COCP No. Location No. Particulars of the petitioner 13442-07 607 of 2008 47-B Sh. Sant Ram Khasra Nos. Area 944/1, 944/2(14822.5 Name 944/1, 944/2 share sq.yards) Sh. Sant Ram 949.09(251/3920) village Khandsa, shares) Tehsil & District Sh. Balkishan 949.09(251/3920) Gurgaon. Shares) 1898.18 Sq.yards Legal Status

1. Objections filed u/s 5-A of Land acquisition Act which were considered and rejected by Land Acquisition Collector, Gurgaon.
2. CWP No. 19733 of 2004 was filed earlier.
3. No representation filed before the High Powered Committee.
4. Award announced by LAC on 18.11.2005. Brief facts as submitted by the petitioners According to the petitioners, they are owners of land measuring 1898.19 sq.yards as per their share in subject land. Petitioners are using the land in question for residential purposes, shops and agricultural purpose.

Factual Position The land of petitioners is part of Industrial Sector-34, Gurgaon. It is located along side the 12.5 mtr. wide existing village road and goes deep inside towards the northern side. A major part of the land is lying vacant and is being used for agricultural purpose as can be seen from the attached photographs. There are structures existing on the subject land in the front and one side which are being used for shops and labour housing. The petitioners have not applied for the permission for change of land use. The land in question partly comes in way of widening of existing 12.50 mtrs. wide road to 30.00 mtr. in accordance with the approved lay out plan of Sector 34-35 Gurgaon.

The current use is non-conforming. Photographs of the site taken on 24.1.2009 are attached on the following page.

Recommendations The officer's committee, after considering the submissions made on behalf of the petitioners and the factual position at site, observed that major part of the structures falls in the right of way of proposed widening of the road. The rear portion is generally lying vacant and being used for agricultural purposes, the subject land is covered under the criterion laid down in para 5 (i) and (ix).

As such, the Committee recommends that the acquisition of the subject land should be upheld.

Again, as in other cases, the petitioners would be entitled to the residential plots and the commercial site as per the R&R Policy.

Meaning thereby, all the contentions raised by the petitioners in this petition, have already been considered and decided by the appropriate Committee vide

impugned order (Annexure P19).

However, the celebrated argument of learned Counsel that as the residential house of the petitioners has already existed, therefore, the Committee ought to have released their land from acquisition, is not only devoid of merit, but misplaced as well. We cannot accept this argument because the bare perusal of the record would go to show that the land of the petitioners alongwith other land was acquired for a public purpose, namely, for development of integrated complex for industrial, institutional, commercial, recreational and other public utilities vide notification dated 15.11.2002 (Annexure P3) u/s 4 of the Act. The objection petition filed by the petitioners u/s 5-A of the Act was duly considered by the authorities and their land in dispute was included in the notification dated 12.11.2003 (Annexure P5) u/s 6 of the Act. Since the land of the petitioners forms a part of Industrial Sector 34, Gurgaon, along side the existing road, a major part of the land is lying vacant and is being used for agricultural purpose, therefore, the same cannot possibly be released because if their claim is accepted, it will adversely affect the planning provision of Industrial Sector 34, Gurgaon as per development plan. As such, the Committee has rightly recommended that the acquisition of the disputed land be upheld and observed that as in other cases, the petitioners would also be entitled to the residential plots and the commercial site, as the case may be, as per the Rehabilitation Policy of the Govt. Therefore, land of the petitioners cannot possibly be released and the contrary arguments on their behalf "stricto sensu" deserve to be and are hereby repelled, under the present set of circumstances.

9. There is another aspect of the matter, which can be viewed from a different angle. It is not a matter of dispute that after following the legal procedure and having completed all the codal formalities, the Land Acquisition Collector (hereinafter to be referred to as "the Collector") has already announced the award on 18.11.2005 (Annexure P10). It is depicted in the award that the possession of the acquired land will be taken by the Tehsildar, Gurgaon and handed over to HSIDC Department, but no possession of such land will be taken where the stay of dispossession has been granted by this Court. The mere fact that possession has not been taken by the State of Haryana on account of stay of dispossession granted by this Court, would not come to the rescue of the petitioners in this context, because it, ipso facto, will not vitiate the acquisition proceedings in any manner. The award (Annexure P10) was announced by the Collector and filed in his office, which is final and conclusive evidence between the Collector and the persons interested in regard to the true area and value of the land as contemplated u/s 12 of the Act. It cannot possibly be denied that the present petitioners have filed the present petition much subsequent to the announcement of the award. Once the award has become final, then the writ petition is clearly not maintainable, so as to impugning the action of the respondents in acquiring the land in question, in view of the law laid down by Hon"ble Supreme Court of India in *Star Wire (India) Ltd. Vs. State of Haryana and Others*, , *Swaiika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and*

Others, and this Court in *Convertaid Engineers Pvt. Ltd. and Others Vs. State of Haryana and Others*, and *Kamlesh Chander and Ors. v. State of Haryana and Ors.* 2008(4) R.C.R. (Civil) 535. As sequel to and above being the position, we are satisfied that the instant writ petition filed, so as to challenge the notifications whereby the land of the petitioners was acquired, after passing the award, is not maintainable.

10. Likewise, the petitioners have utterly failed to substantiate that how and in what manner they have been discriminated in this respect. Moreover, the appropriate Committee has recommended that like other landowners, the present petitioners would also be entitled to residential/commercial plots, as the case may be, as per the Rehabilitation Policy of the Government.

11. Thus seen from any angle, the indicated action of the respondents cannot possibly be (sic)saith to be either arbitrary or illegal requiring interference by this Court in an acquisition matter, particularly when there has been no specifically, ellegation of malice and ulterior motive against any of the officers.

12. It is now well settled proposition of law that such action ox the respondents can only be interfered with, if the Court comes to the conclusion that acquisition proceedings are vitiated by arbitrariness, unfairness, illegality or irrationality. No such vital irregularity or patent illegality has been pointed out by the counsel for the petitioners in the impugned acquisition proceedings and order (Annexure P19) in this connection.

13. Such thus being the state of affair on record and legal position, we are of the considered opinion that no fault can be found and the acquisition proceedings deserve to be and are hereby maintained, in the obtaining circumstances of the case.

14. No other point, worth consideration, has either been urged or pressed by the learned Counsel for the petitioners.

15. For the reasons recorded above, as we find no merit, therefore, the instant writ petition is hereby dismissed.