

(2010) 02 P&H CK 0270
In the Punjab And Haryana At Chandigarh

Sehdev and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition (Mines) Act, 1885 — Section 17
Land Acquisition Act, 1894 — Section 17, 4, 5A, 6

Citation : (2010) 158 PLR 396

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

Bench : Division Bench

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution challenges notification dated 17.9.2004 (P-1), issued u/s 4 read with Section 17(2)(c) of the Land Acquisition Act, 1894 (for brevity, "the Act") and declaration issued u/s 6 read with Section 17(2)(c) the Act, dated 27.10.2004 (P-3).

2. Brief facts of the case are that the petitioners are owners of land situated in the revenue estate of village Lakhnaula, Tehsil and District Gurgaon, which has been described in para 2 of the petition. It has been claimed that they have constructed their residential and commercial buildings on the land in question where they are residing and also earning their livelihood by doing their business and cultivating part of the land.

3. On 27.8.2004, the respondent State of Haryana issued a notification u/s 4 of the Act for acquiring total land measuring 912 Acres 0 Kanals and 7 Marlas at public expense for a public purpose, namely, for setting up of Chaudhary Devi Lal Industrial Model Township, to be planned as an Integrated Complex for residential, Recreational and other public utilities, in village Lakhnoula, Naurangpur and Manesar, Tehsil and District Gurgaon. A perusal of the notification shows that the interested persons could file their objections within a period of thirty days of publication of the said notification in the official gazette and in two daily newspapers circulating in the locality (P-2).

4. On 17.9.2004, another notification u/s 4 read with Section 17(2)(c) of the Act was issued seeking to acquire land measuring 956 Acres 5 Kanals and 18 Marlas for the same public purpose. However, in this notification the name of the public purpose has been described as "at public expense for a public purpose, namely, for setting up of Chaudhary Devi Lal Industrial Model Township, Phase-V, Manesar, to be planned and developed as an Integrated Complex for Industrial, Institutional, Commercial, Recreational and other public utilities, in village Nabada Fatehpur, Naurangpur, Manesar, Lakhnola, Naharpur Kasan and Shikopur, Tehsil and District Gurgaon". Further, by invoking the provisions of Section 17(4) of the Act, the requirement of filing objections u/s 5-A of the Act was also dispensed with this time.

5. A number of writ petitions were filed in this Court challenging the aforementioned notifications. On 25.10.2004, the petitioners filed CWP No. 17107 of 2004, which came up for hearing before a Division Bench of this Court on 2.11.2004 and the same was disposed of as pre-mature in terms of the order passed in CWP No. 16461 of 2004. It was however, ordered that the petitioners were not to be dispossessed till the issuance of notification u/s 6 of the Act. In the meanwhile, on 27.10.2004, the respondent State issued a declaration u/s 6 read with Section 17(2)(c) of the Act acquiring the aforementioned land including the land belonging to the petitioners. It has been alleged that the declaration u/s 6 of the Act was neither published in two newspapers nor it was proclaimed in the locality. On coming to know about the issuance of declaration u/s 6 read with Section 17(2)(c) of the Act, the petitioners filed the instant petition on 8.11.2004, impugning the notifications dated 17.9.2004 and 27.10.2004 (P-1 & P-3). On 18.11.2004, a Division Bench of this Court while issuing notice of motion directed the parties to maintain status quo. Eventually, the writ petition was admitted on 31.7.2006 and interim order was to continue.

6. A number of petitions by various land owners were also filed impugning the same notifications. On 16.4.2009, a bunch of 84 such writ petitions came up for consideration before a learned Single Judge of this Court including CWP No. 17108 of 2004 (Tara Chand and Ors. v. State of Haryana and Ors.) being the lead case. Having gone through the contentions raised in various petitions, learned Single Judge has found that the petitioners have impugned the legality of the notifications primarily on the following grounds:

- (a) The setting up of an industrial township cannot, by any stretch of imagination be said to be urgent;
- (b) No reasons are forthcoming for invoking the urgency provisions of Section 17 of the Act;
- (c) The urgency is not such as could not brook the inviting and deciding of objections u/s 5A of the Act;
- (d) The respondents have failed to place any material on record that would suggest that the government applied its mind to the nature of the urgency; or

(e) Applied its mind to the question whether the urgency is of such a nature, as would necessarily require the suspension of the provisions of Section 5-A of the Act;

(f) Lands have been released from acquisition arbitrarily;

(g) Lands acquired earlier for the Industrial Model Township, Manesar were not acquired by invoking urgency provisions.

7. After referring the rival contentions raised by the parties, discussing the relevant provisions of the Act and in the light of various judgments of Hon''ble the Supreme Court rendered in the cases of Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others, ; Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, ; State of Punjab and Another Vs. Gurdial Singh and Others, ; Jai Narain and Others Vs. Union of India and Others, ; Om Prakash and Another Vs. State of U.P. and Others, ; First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, ; Union of India (UOI) and Others Vs. Mukesh Hans etc., ; Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, ; and Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another, , learned Single Judge has reached the following conclusions:

(a) The expropriatory power of the State to acquire land, for a public purpose is absolute

(b) Rights conferred by Section 5-A of the Act, to file objections against proposed acquisitions of property are akin to fundamental rights;

(c) The power u/s 17(1) of the Act, to take possession, of acquired land can be exercised, if there is an urgency;

(d) The satisfaction as to the existence of an urgency falls within the subjective satisfaction of the State but would be open to judicial review, where the exercise of power is malafide, arbitrary or discloses an abject failure of the appropriate Government to apply its mind to relevant facts namely:

(1) The urgency should be of such a nature as does not brook any delay;

(2) It is not the urgency alone that would determine the exercise of power u/s 17(4) of the Act, but the existence of such an urgency, as renders imperative, the suspension of rights conferred by Section 5-A of the Act,

(e) Where the State proposes to invoke Section 17(4) of the Act, the appropriate authority must satisfy itself that the urgency is of such a nature that does not brook the time required to invite and decide objections;

(f) The State would be required, to disclose to the Court, whether it has applied its mind not merely to the existence of an urgency, but also to the facts that the urgency is of such a nature, as would render imperative the suspension of, rights conferred by Section 5-A of the Act.

8. In light of the above conclusions, the learned Single Judge further examined the arguments, pleadings and the record put forward before him and finally concluded as under:

A consideration of the averments in the reply and an appraisal of the record discloses an abject failure of the State of Haryana, to record any satisfaction much less a subjective satisfaction, as to the existence of an urgency or the existence of such an urgency as would necessarily require it to invoke the provisions of Section 17(4) of the Act. The material placed before this Court refers to the highly successful marketing tours by the Chief Minister, in India and abroad, the request by Maruti Udyog Ltd. for further allotment of land and a request by M/S B.M.W. for allotment of land etc. The material refers to the need to create land banks etc. and in compliance with an order passed by the Hon'ble Supreme Court, to rehabilitate industries displaced from Delhi. The need to rehabilitate displaced industries, may in the facts and circumstances of the present case be urgent, but the question that begs to be answered by the State and for which no answer is forthcoming, is whether the avowed public purpose was so urgent as to require the suspension of the provisions of Section 5-A of the Act and whether the appropriate Government, i.e. the State of Haryana, or any officer acting on his behalf applied its mind to the necessity of suspending the provisions of Section 5-A of the Act on the basis of this urgency. The record placed before this Court does not refer to any urgency, much less spell out the nature thereof but merely states that land be acquired by invoking urgency provisions. Be that as it may, and for a moment accepting that there was an urgency, the respondents were required to produce some material to suggest a minimal application of mind to the nature of the urgency and the consequent need to suspend Section 5-A. Mere reference, in the office note or in the letters exchanged that urgency provisions should be invoked would not, in my considered opinion, satisfy the requirements of a bonafide exercise of statutory power u/s 17(4) of the Act. A significant omission, in the exercise of power by the appropriate Government, is the failure by any officer, whether the officer initiating the proposal, the officer who examined it or the final authority that approved the proposal for acquisition, to record even a rudimentary satisfaction that the urgency is of such a nature, as would necessarily require the appropriate Government to suspend the provisions of Section 5-A of the Act. The respondents were apparently oblivious of the principles that govern the exercise of their powers and in their zeal to create land banks for industries, proceeded to invoke Section 17(1) and Section 17(4) in a cavalier fashion, disregarding the constraints enacted by Section 17 and the rights of land owners conferred by Section 5-A of the Act. It is true that while recording its satisfaction, the appropriate Government is not required to record detailed reason or pass an order akin to a judicial or a quasi judicial order, but one cannot lose sight of the significance of a decision to suspend Section 5-A of the Act and the fait accompli attendant thereto. The State of Haryana was, therefore, required before proceeding to invoke the provisions of Section 17 to record satisfaction,

howsoever perfunctory, to the fact that the urgency is so pressing as would require the suspension of the provisions of Section 5-A of the Act. The record placed before this Court, in my considered opinion, does not disclose any application of mind as to the nature of the urgency and the necessity to suspend the provisions of Section 5-A of the Act.

The submission by counsel for the State of Haryana that as the proposal for acquisition clearly states that urgency provisions should be invoked an inference should be drawn that the appropriate authority applied its mind to the nature of the urgency and the necessity to invoke its powers u/s 17 of the Act, must be rejected. An inference in law arises from relevant facts. In the absence of any relevant facts, no such inference can be drawn. A perusal of the initial proposal, the letters placed on record and the final note prepared for approval of the Chief Minister and the Secretary concerned do not disclose any reference to the nature of the urgency or the fact that the urgency is of such a nature as would not brook any delay. It was, therefore, imperative that the State before invoking its powers u/s 17(1) and (4) of the Act, should have called for and appraised all relevant material to form a considered opinion necessitating the suspension of Section 5-A of the Act.

The power conferred by Section 17(4) of the Act, enables the appropriate Government to divest a land owner of his only right to protest against the expropriatory divesting of his property but, where the exercise of this power discloses a failure to consider relevant material or record even a perfunctory reason for suspending the rights conferred by Section 5-A of the Act such an exercise of statutory power would have to be held to be arbitrary. The submissions made by counsel for the State of Haryana that the subjective satisfaction by the State is not justiciable and should, therefore, be upheld, cannot be accepted. Divesting land owners of their right to voice objections, is a significant departure from the rules of natural justice appearing in Section 5-A of the Act. Any aberration, on the part of the State, in the exercise of its powers, would invite adverse consequences. No amount of legal semantics would save governmental action vitiated by an arbitrary exercise of power.

As regards the dismissal of CWP No. 4508 of 2006 vide order dated 21.4.2006, where the urgency has been upheld, suffice it to say that it relates to a different notification and the invoking of urgency provisions was upheld on facts.

In view of what has been stated herein above, I have no hesitation in holding that the State of Haryana failed in the exercise of its power to abide by the mandate of law and proceeded to invoke Section 17(4) of the Act arbitrarily, without application of mind and, therefore, the notifications issued under Sections 4 and 6 of the Act and all proceedings emanating therefrom are quashed subject, however, to a different result on account of the individual peculiarities of each case, which shall be dealt with separately.

9. The learned Single Judge while dealing with individual writ petitions of the

bunch, however, found that some of the petitions were filed after acceptance of compensation, some of them were filed after pronouncement of the award by the Land Acquisition Collector where a part of the land has been released and some of the them were filed by such persons who have purchased the land after initiation of the process of acquisition. Accordingly, the learned Single Judge bifurcated the petitions into following four categories:

- (A) Writ petitions which were filed after the award;
- (B) Writ petitions where the petitioners or some of the petitioners have received compensation;
- (C) Writ petitions where land has been released; and
- (D) Writ petition where the property was purchased after the initiation of the process of acquisition.

10. The writ petitions falling under Categories (A), (B) and (D) have been dismissed by the learned Single Judge qua such persons who have either approached this Court after announcement of the award or who have received the compensation. The writ petitions of remaining persons have been allowed. However, while quashing the notifications under Sections 4 and 6 of the Act and all subsequent proceedings emanating therefrom, learned Single Judge has granted liberty to the State of Haryana to initiate a fresh process of acquisition after complying with the provisions of the Act.

11. On 4.9.2009, the petitioners filed an application bearing C.M. No. 15168 of 2009, seeking disposal of the instant petition in terms of the decision dated 16.4.2009, passed by the learned Single Judge in the case of Tara Chand (supra). Notice of the said application was issued on 17.9.2009. On 21.10.2009, when the matter came up for hearing before a Division Bench of this Court, learned Counsel for the parties were in agreement that the controversy on the point in issue raised in the instant petition has already been adjudicated by the learned Single Judge in the case of Tara Chand (supra). However, it was pointed out that an LPA against the decision rendered in Tara Chand's case (supra) has already been filed and the disposal of the instant petition on merits would prejudice the claim of the respondent State in the LPA. An adjournment was sought and granted on that ground.

12. At the resumed hearing we have inquired from the learned State counsel about the status of the LPA. However, she has not been able to give any satisfactory reply. Neither particulars of the LPA have been furnished before us nor any order passed by the Letter Patent Bench has been shown staying operation of the decision dated 16.4.2009 passed by the learned Single Judge.

13. Having heard learned Counsel for the parties at considerable length we are of the considered view that the instant petition is squarely covered by the decision dated 16.4.2009 passed by the learned Single Judge in Tara Chand's case (supra). We see no ground to differ with the conclusions arrived at by the

learned Single Judge in the said case.

14. Admittedly the instant petition has been filed before announcement of the award. Nothing specific has been placed on record by the respondents to show that any of the petitioner has ever received compensation. Only a vague averment was made in para 4 of Civil Misc. No. 20876 of 2007, which was filed by the respondent-HSIIDC on 30.5.2007 for vacation of stay order qua dispossession of the petitioners, stating that "majority of the erstwhile land owners/shareholders/interested persons, received the compensation qua their acquired land among whom the petitioners and their share holder in this case are also included who received the compensation". It is, thus, evident that the instant petition deserves to be allowed as it does not fall in any of the excepted categories A, B, C and D carved out by the learned Single Judge, which were dismissed.

15. In view of above, the instant petition is allowed in terms of the decision dated 16.4.2009, passed in the case of Tara Chand (supra).