

(2015) 08 P&H CK 0166
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 6854 of 2014

Shiv Charan and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5A, 6, 9

Citation : (2015) 4 RCR(Civil) 985

Hon'ble Judges : Ajay Kumar Mittal and Rekha Mittal, JJ.

Bench : Division Bench

Advocate : Sanjay Kaushal, Sr. Advocate and Sandeep Sharma, Advocate, for the Appellant; Palika Monga, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—Learned counsel for the petitioners has filed Annexures P. 15 to P. 20 alongwith an application in Court which are taken on record. Prayer in this petition is for quashing the notifications dated 3.10.2006 and 1.10.2007 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (in short, "the Act"), award dated 30.9.2009 and order dated 19.3.2014, rejecting the claim of the petitioners for release of their land, Annexures P. 1, P. 3, P. 4 and P. 13 respectively.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The father of the petitioners was co-owner of Khasra No. 31/1 measuring 8 biswas of land. After his death, the petitioners are owners in possession of land. They have also raised construction thereon much prior to the issuance of notification under section 4 of the Act. The land of the petitioners and their co-sharers Rajinder and others is surrounded from all the three sides by the property of DLF company. Respondent No. 2 issued notification under section 4 of the Act proposing to acquire the land in the area of Village Dundahera HB No. 66, Village Nathupur HB No. 67 and Village Sukenderpur Ghosi HB No. 68, Tehsil and District Gurgaon including the land of the petitioners

situated in Village Nathupur for the purpose of utilizing the same for residential, commercial and institutional Sectors 24 and 25A at Gurgaon. Now the respondents have released this land vide order dated 17.6.2010 from the same Khasra No. 31/1/1 (0-13-0) under the same notification and awarded in favour of the private builder i.e. DLF. The petitioners filed objections under section 5A of the Act. However, without considering the objections, the respondents issued notification under Section 6 of the Act on 1.10.2007, Annexure R3 and award was passed on 30.9.2009, Annexure R4. According to the petitioners, the land is being acquired for use and benefit of DLF company without following the procedure contained in Chapter VII of the Act. Land owners under the threat of acquisition are being compelled to sell the land to the DLF company. In these circumstances co-sharers of the petitioners i.e. his brother Rajinder etc. after notification under section 4 entered into a collaboration agreement dated 6.7.2007 with M/s. DLF limited company in respect of half share of land falling in Khasra No. 31/1. The petitioners had also filed CWP No. 1992 of 2008 in this Court seeking quashing of the aforesaid notifications under section 4 and 6 of the Act which was disposed of on 11.2.2008, Annexure P. 6 with a direction to the respondents to consider their claim for release of the land in view of policy dated 26.10.2007, Annexure P. 5 which in turn provided release of land where construction existed prior to the notification under section 4 of the Act. The petitioners also filed CWP No. 20688 of 2013 in which direction was issued to the respondents to consider the claim of the petitioners for releasing their land in view of the observations passed by this court. According to the petitioners, they are in physical possession and they have not received any compensation. The representation submitted by the petitioners before respondent No. 2 was rejected vide order dated 1.8.2008, Annexure P. 7. Hence the instant writ petition.

3. We have heard learned counsel for the parties.

4. Learned counsel for the petitioners submitted that the case of the petitioners was similar to the persons whose land had been released and in such a situation, in view of the judgment of the Apex Court in Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others, , land of the petitioners was required to be released. It was also urged that no notice under section 9 of the Act was issued to the persons whose land was released whereas similar was the situation in the case of the petitioners.

5. Learned counsel for the respondents on the other hand supported the impugned order.

6. We do not find any merit in the contentions raised on behalf of the petitioners. In the written statement filed on behalf of respondent No. 2, it has been inter alia stated that land of the petitioners in Khasra No. 129(2-0-0) has already been released by the government being constructed area and rest of the vacant land measuring 0-8-0 in Khasra No. 31/1 was included in the declaration under section 6 of the Act. It was further stated that in compliance with the order dated

18.9.2013 passed by this court in CWP No. 20688 of 2013, the claim of the petitioners was duly considered by the High Power Committee and it was found that land of the petitioners could not be released because the said land disturbed all Sector planning. Thus, their claim was rejected.

7. Further, in the order dated 19.3.2014, Annexure P. 13, passed by the Director General, Urban Estates, Haryana, Panchkula, it was recorded as under:-

"The instant civil writ petition has been filed by the petitioner on the ground that his land may be released on the same analogy on which the land was released vide order dated 17.6.2010 annexed as Annexures P. 9 and P. 10. The petitioner has also claimed that his land has been released after announcement of award. In this context, the office report mentioned at para No. 6 clearly brings out the fact that Annexures P. 9 and P. 10 were in fact memos issued to comply with the office procedure, whereas the Khasra Nos. of land mentioned the memos had already been excluded from the award because these khasra Nos. were included in the schedule of land considered for grant of licence under the Haryana Development and Regulation of Urban Areas Act, 1975 and hence, as per decision of the Government the said land was released from acquisition before the announcement of award and accordingly these khasra Nos. were not Included in the award. This fact has been clarified in Annexure P. 10 itself that the land was not included in the award. Hence this land was not released after award. Whereas the Khasra Nos. of the land of the petitioner were included in the award and the land stands acquired. Thus, the submission of the petitioner to release his land on the same analogy as per which the order dated 17.6.2010 was passed and annexed as Annexures P. 9 and P. 10 is not correct and cannot be considered. HUDA (TP Wing) has reported that the land will be utilized by HUDA for one or many of the uses like police post, Vita Booths, Safal Shop and HUDA Nursery. It is further observed that case of the petitioner has no similarity with the case of the respondent No. 4. The petitioner had never sought release of his land for grant of licence, which the Government was considering at that point of time as per its land release policy dated 26.10.2007. The request of the petitioner was turned down earlier also by the then PSTCP by orders dated 1.8.2008. These are detailed orders and not casual or perfunctory as claimed by the petitioner. In view of the fact mentioned, I find no merit in the submission of the petitioner to release the land and hence the same is declined. The petitioner be informed."

A perusal of the findings recorded by the respondent authority shows that the case of the petitioners was distinguished after examining the record. Their request was also earlier declined by the respondent authorities vide order dated 1.8.2008. Learned counsel for the petitioners was unable to point out any illegality or perversity in the said findings so as to call for interference by this Court. Further, the proposition of law enunciated by the Apex Court in M/s. Royal Orchid Hotels Limited case (supra) is well recognized. However, in view of the findings noticed herein above, no benefit can be derived by the petitioners from

the said pronouncement. Consequently, finding no merit in the petition the same is hereby dismissed. Consequently, finding no merit in the petition, the same is hereby dismissed.