
(2013) 05 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4963 of 2012

Shyam Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 23-05-2013

Acts Referred:

Citation : (2013) 4 RCR(Civil) 242

Hon'ble Judges : Ritu Bahri, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Arun Jain and Mr. Abhinav Sood, for the Appellant; Radhika Suri, Addl. AG, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to the notification dated 28.10.2003 (Annexure P. 12) published u/s 4 of the Land Acquisition Act, 1894 (for short, "the Act") and the notification dated 9.12.2011 (Annexure P. 17) published u/s 6 of the Act intending to acquire land including the land of the petitioners for the stated public purpose i.e. setting up of "New Anaj Mandi". Vide notification dated 28.10.2003, land measuring 30 acres 6 kanals 10 marlas was intended to be acquired located in Village Kurali and Charharhi. Earlier, the State invoked urgency provisions and published notification u/s 6 of the Act on the same date, but in a challenge to the such acquisition proceedings at the instance of some of the petitioners, this Court on 04.07.2006 in C.W.P. No. 17704 of 2003 titled "Gurcharan Singh v. State of Punjab & others" set aside the notification u/s 6 of the Act published, but granted liberty to the State to proceed with the acquisition proceedings from the stage of publication of Section 4 notification. Still aggrieved, some of the petitioners filed SLP before Hon'ble the Supreme Court. The SLP was dismissed on 18.01.2011. It is, thereafter, notification u/s 6 of the Act was published declaring that the land measuring 21 acres 16 marlas is required for a public purpose after considering objections filed by the petitioners u/s 5A of the Act.

2. The objections of the petitioners u/s 5A of the Act are inter-alia to the effect that earlier, the State has issued a notification u/s 4 of the Act on 01.07.2002 intending to acquire land measuring 21 acres 6 kanals 15 marlas. However, the State did not proceed with the acquisition in pursuance of the said notification in view of the communication from Minister for Animal Husbandry, Punjab suggesting that the Mandi be set at some other place. Thereafter, the present notification has been issued. It is also contended that the acquisition proceedings have been carried out due to political pressure and not for any public purpose and that 30 acres of land owned by shamlat deh since transferred to Municipal Council is available over which the New Anaj Mandi can be set up. It is also pointed out that there exists residential houses of the petitioners over the land, which are sought to be acquired. The petitioners have appended lay out plan (Annexure P. 20) pointing out that the land which does not form part of acquisition in notification u/s 6 of the Act and also the land, which forms of acquisition.

3. In the reply filed, it has been pointed out that the objections of the petitioners have been considered after providing opportunity of hearing to the land-owners. The Collector submitted report on 08.08.2011. The State Government considered the report of the Collector, the objections filed by the land-owners and approved the proposal and issued declaration u/s 6 of the Act. It is also submitted that the earlier site, in respect of which notification was published on 01.07.2002, appears to be expensive and close to residential area, but the present site is not only financial viable rather more suitable to set up grain market. It is pointed out that Kurali Grain Market is old and has insufficient space. It is situated in the middle of the city and adjoining the railway crossing causing traffic problem. At present, the Mandi is running on leased land measuring 10 acres on which substantial amount is being spent as rent and causes numerous problems to the farmers and general public at large. Due to "kachha space" of the Grain Market, at the time of rains, it causes great losses to the grains of the farmers. There is dire necessity to set up Grain Market in the Kurali as early as possible. It is also pointed out that earlier survey was conducted before acquisition and the present site was found to be more suitable and feasible to the farmers, commission agents and general public at large.

4. During the course of hearing yesterday, the State was directed to produce a lay out plan pointing out the construction existing on the land, which does not form part of notification u/s 6 of the Act and on the land under acquisition.

5. Ms. Suri has produced a lay out plan showing construction in the land which is not part of acquisition and the construction on the land which is part of acquisition. It is pointed out that there is a house constructed over Khasra No. 21/1 situated on Kurali Ropar Road, which is subject matter of acquisition, but such land is part of acquisition to provide access to the remaining land situated away from highway. It is pointed out that the land, which is not part of acquisition is situated on the National Highway is more expensive. Therefore,

only the land required for providing access from the National Highway has been acquired leaving other land on the National Highway. It is also pointed out that in the rest of the acquired land, there are few scattered houses and cattle shops, but substantially the land is vacant land.

6. We have heard learned counsel for the parties and find no merit in the present petition. The argument of learned counsel for the petitioners is that earlier three sites were considered for acquisition out of which notification in respect of one was published, but later on the acquisition proceedings have been abandoned, shows that the land of the petitioners has been made subject matter of acquisition due to political considerations. It is also contended that though the petitioners have asserted in the earlier writ petition that publication of notification u/s 4 of the Act was not justified in view of the alternative sites, but such objection is available to the petitioners having granted opportunity of submitting objections u/s 5A of the Act. It is also pointed out that constructed house of Bhupinder Singh is intended to be acquired though the constructed houses of some other similarly situated land-owners have been left from acquisition. It is also contended that land of shamlat, now with the Municipal Council is available, which is similarly situated and can be acquired for the stated public purpose.

7. The petitioners in the earlier petition have challenged the notification u/s 4 of the Act on the ground that the earlier site selected has been changed and the earlier acquisition proceedings started with publication of notification on 01.07.2002 has been abandoned arbitrarily. Once the challenge to the said notification had remained unsuccessful in the earlier writ petition filed by the petitioners, the petitioners cannot be permitted to dispute the notification in the present writ petition.

8. Even if it is considered that the petitioners have right to objection to the acquisition proceedings on the grounds which are available prior to publication of notification u/s 4 of the Act, we do not find any merit in the pleas raised by the petitioners. The selection of a site of a Mandi for public purpose is a difficult process. Number of factors are to be taken into consideration, i.e., availability of land, accessibility for the use by the general public and also the financial implications. Since the earlier notification dated 01.07.2002 is said to be in respect of land close to residential area and thus expensive, it cannot be said that the State is bound to continue with the acquisition of land initiated by the said notification or that same land is required to be acquired. Similarly, the land of Municipal Council, i.e. shamlat, now vested with it is the land meant for common purposes. The site plan does not reflect the location of the site. Whether such land is suitable for the purpose of acquisition is a matter which is required to be considered by the acquiring authorities. We do not find that in exercise of writ jurisdiction, we can substitute the decision of the acquiring authorities as to which land should be acquired. The requirement of Anaj Mandi in the area cannot be disputed. Some land is required to be acquired. It is to say

that instead of my land, the land of another person should be acquired. One can understand, the hardship, which the petitioners may suffer on account of acquisition of their land, but such individual interest have to give way to the public interest.

9. Though the objection of the petitioner is in respect of construction over khasra No. 21/1, but neither in the writ petition nor in the objections, there is averment that house of the petitioners is situated over Khasra No. 21/1. Even if house of any of the petitioners is constructed over Khasra No. 21/1, the fact remains that such land is required to provide access to the land which is now declared as required for a public purpose. Since the land is acquired for access, therefore, the acquisition of the same cannot be said to be illegal or arbitrary in any manner. Consequently, we do not find any merit in the present writ petition. The same is accordingly dismissed.