
(2015) 12 P&H CK 0140
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 8439 of 2013

Simbhu Dayal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 6
Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 12, 12(3), 12(3)(ii), 24, 5

Citation : (2015) 12 P&H CK 0140

Hon'ble Judges : Hemant Gupta and Raj Rahul Garg, JJ.

Bench : Division Bench

Advocate : Puneet Bali, Senior Advocate, Abhishek Yadav and Monika Thakur, Advocates, for the Appellant; Palika Monga, DAG, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—This order shall dispose of the aforementioned writ petition as well as the writ petitions, mentioned at the foot of the order, challenging notifications dated 14.03.2012 and 31.01.2013 issued under Sections 4 & 6 of the Land Acquisition Act, 1894 (for short "the Act"), whereby land measuring 20 Acre 1 Kanal 5 Marla was acquired for a public purpose i.e. to construct a bus stand at Rewari, District Rewari. However, for the facility of reference, the facts are taken from the aforementioned writ petition.

2. The petitioner is owner of land situated in Village Rewari, Tehsil & District Rewari, which stands notified for a public purpose i.e. to construct a bus stand at Rewari, District Rewari vide aforesaid notifications. The acquisition is challenged on the ground that in the final Development Plan (Annexure P-2) published on 18.03.2009 under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (for short "the 1963 Act"), the area demarcated for construction of bus-stand is in Sector 12 having legend No. 420, whereas the land of the petitioner is reserved for open space having legend No.

700. The petitioner has also referred to the communication dated 13.09.2010 (Annexure P-3) from the Administrator, HUDA, Gurgaon to the Chief Administrator, HUDA (Town Planning Wing), Panchkula to the effect that a site measuring 20 acres in Sector - 20 (Residential) has been identified for construction of bus-stand for which approval was sought. The petitioner has also referred to the draft Development Plan - 2031 around Municipal Town Rewari and Controlled Area around Primary School Village Khaliawas. A perusal of the said Plan shows that the Legend 400 is for transport and communication, whereas Legend 420 within that area is for roads, road transport depot and parking areas dockyard. The said area falls on Bawal-Rewari road of NH-71 in the revenue estate of Village Gajjiwas. There is a bus-stand reflected on NH-71B close to Delhi-Rewari road near Legend 310, 320 & 330 i.e. the Industrial area. The said bus-stand appears to be the existing bus-stand.

3. It is pointed out that though the land was reserved for bus-stand in Sector 12 having legend No. 420, but the bus stand was later proposed in Sector 20, Rewari. But later on the land of the petitioner has been notified vide the notification impugned in the present writ petitions for setting up of a bus-stand. Thus, the land of the petitioner, reserved for open area as per the Development plan, is being acquired for the purpose of bus stand in contravention of the Development Plan, Rewari-Bawal Urban Complex. The petitioner has also asserted that he has residential house over the land in question, which is required to be exempted in terms of the Policy of the State Government. The land for the bus-stand is reserved in another pocket, therefore, the acquisition is not sustainable.

4. In reply, the stand of the District Revenue Officer -cum- Land Acquisition Collector - respondent No. 2 is that he visited the acquired land along with the Officers on 29.08.2012 and found that the petitioner does not reside there, but has built up two small rooms and four-walls, just to defeat the valuable right of the State. It is explained that the land in Sector 20 was not found proper due to the reason that the said sector is surrounded by the thickly populated residential sector. The bus-stand would create nuisance in the nearby residential area. It is also pointed out that at the time of proposal of construction of bus-stand, Rewari, Rewari Depot of the Haryana Roadways has 145 buses which are likely to go up to 200 buses. The General Manager, Haryana Roadways, Rewari has requested for an area of approximately 20 acres for bus-stand and workshop. Therefore, the land in question was recommended for acquisition.

5. In a separate reply filed on behalf of respondent Nos. 5 & 6, the District Town Planner explained that the site of new bus-stand proposed in Sector 12, Rewari was not approved by the competent authority, which was earmarked for Industrial and Open Space use in the draft Development Plan 2021 A.D. bearing drawing dated 13.12.2006. Subsequently, a Committee was constituted for selecting the site for new bus-stand. The said Committee suggested the alternative site in residential Sector 20, Rewari. However, on 05.10.2010, the

Chief Administrator, HUDA, Panchkula turned down the proposal for shifting the bus-stand site from Sector 12 to Sector 20, being residential sector. Thereafter, the decision for retaining the bus-stand site in Sector 12 was conveyed to the General Manager, Haryana Roadways, Rewari on 15.11.2010. It is pointed out that drawings dated 18.03.2009 (Annexure P-2), 15.07.2010/18.12.2012 & 19.11.2010 were never approved by the competent authority nor published for inviting objections. It is further submitted that the Regional Plan prepared by the National Capital Region Planning Board (NCRPB) provides for macro level planning, which is subsequently detailed out in the respective development plans, circulation plans and layout plans. Thus, the micro level planning is to be done by the respective States and no approval of the NCRPB is required. The draft Development Plan 2021 A.D. giving proposed land use has been appended as Annexure R-1. The proposal for acquisition of the Committee constituted for selecting the site for new bus-stand has been annexed as Annexure R-II. Vide Annexure R-VI, the Director General State Transport conveyed the approval of the Chief Minister to the Deputy Commissioner for acquisition of land measuring 20 Acres 5 Kanal 16 Marla of land in Sector 12, Rewari i.e. the land in question on 01.04.2011. The relevant communication reads as under:

"Kindly refer to your office letter No. 741-42/HRDF dated 30.11.2010 on the subject cited above.

I have been directed to convey you that Hon"ble Chief Minister has approved the proposed site measuring 20 Acres 5 Kanal 16 Marla land measuring Rect. No. 108, Khasra No. 2 Min, 3 Min, 4, 5, 6, 7, 8, 9 min 12 min, 13, 14, 15, 16/11, 16/2, 17/1, 17/2, 18/1 min, 18/2 min Rect. No. 19 Khasra No. 1, 2, 9, 10, 11, 13, 19/1, 19/2, 20/1, 20/2, which falls in Sector - 12, Rewari, as requested vide letter under reference. Hon"ble CM is also of the view that at the time of preparing layout plan of the existing site the provision of city Bus Stand be also made to cater the needs of town itself and also ordered that proposed site be developed under PPP mode so that all modern facilities can be provided at the new site.

It is, therefore, requested to take necessary action as per above decision of Hon"ble Chief Minister."

6. An affidavit dated 21.05.2014 has also been filed by the General Manager, Haryana Roadways, Rewari delineating the history of choosing the site for bus-stand. It was pointed out that the proposal for shifting of the existing bus-stand at Rewari was considered during the Divisional Development Review Session in October, 2006. It was noticed that Rewari town is one of the most congested town of Haryana because of its industrial and commercial prominence and the existing bus-stand in the town was adding to the ever increasing congestion in the interior ring and that it would be larger public interest to shift the existing bus-stand to a new site on Dharuhera Road. The Director, Town & Country Planning was requested on 08.06.2007 to allot 10-11 acres land to the Transport Department for the construction of bus-stand and workshop at Rewari near Rao

Tula Ram Stadium (Bye-pass) on Rewari-Dharuhera Road. However, the Deputy Commissioner, Rewari on 28.06.2009 proposed to shift the bus-stand to Sector 20 on HUDA bye-pass from Rao Abhay Singh Chowk towards Rajesh Pilot Chowk. It was proposed to acquire 20 acres land for general bus-stand out of which 16 acres of land was reported to be already acquired by HUDA. However, the said site was not considered suitable by the Chief Administrator, HUDA. The relevant extract from the affidavit read as under:

"viii. The Chief Administrator HUDA vide letter dated 05.10.2010, to the Administrator, HUDA, Gurgaon, copy of which is attached as Annexure A-4, that the land in Sector 20, Rewari which had been proposed for the Bus Stand was acquired for development of residential sector and the provision of Bus Stand in a residential Sector 20, Rewari was not proper as it would create hindrance to the residents. He intimated that purpose of acquisition will also be defeated, in case the land is utilized for Bus Stand. He suggested the already approved site for Bus Stand in Sector 12 for this purpose and the Transport Department/District Administration may be requested to get that land acquired for construction of Bus Stand.

ix. The Deputy Commissioner, Rewari also replied vide his letter dated 30.11.2010, to the Director General State Transport, Haryana, Chandigarh copy of which is attached as Annexure A-5, that the Chief Administrator, HUDA was also of the view that there was no need to change the site from Sector 12 to Sector 20. Apart from this it was submitted that since workshop is also to be constructed, it was, therefore, suggested that land measuring 20A-5K-16M bearing Rect. No. 108, Khasra No. 2 Min, 3 Min, 4, 5, 6, 7, 8, 9 min 12 min, 13, 14, 15, 16/11, 16/2, 17/1, 17/2, 18/1 min, 18/2 min Rect. No. 19 Khasra No. 1, 2, 9, 10, 11, 12, 19/1, 19/2, 20/1, 20/2, which falls in Sector 12 may be acquired."

7. The said proposal was sent for approval to the Government. Upon a query by the Government, it was informed that as per Draft Concept Plan report of Manesar-Bawal Investment Region (MBIR), Phase-1 of MBIR will measure an area of 403 Sq. Km. including developed/developing Industrial Township of Bawal. The population forecast was 2.4 lakhs in 2015 and 38.84 lakhs in 2040. It was noticed that 25 buses per one lakh are required for urban population for efficient, adequate and proper coverage and service would be required for inter-city bus transportation. It was found that in future there will be requirement of one more bus-stand for long route buses in Rewari town. Therefore, for Regional Transport within MBIR and to the town in immediate vicinity of MBIR, the existing bus-stand will be utilized. The new site measuring 20 Acre 5 Kanal 16 Marla of land was approved by the Government on 21.03.2011. Thereafter, the acquisition process was initiated and completed.

8. During the course of arguments, Ms. Monga has pointed out that the State Government in exercise of powers conferred under Section 24 of the 1963 Act and Clause XX of the Draft Development Plan - 2021 and Draft Development Plan

- 2031 has relaxed purpose of use of the land so as to include construction of bus stand. The original file has also been produced whereas the photocopy of the file has been kept on record.

9. Learned counsel for the petitioner has vehemently argued that the construction of bus-stand could be carried out only on the area ear-marked for the purpose in the draft Development Plan. Such area is reflected in the Development Plan as No. 420. However, the impugned notifications pertain to the land reflected as No. 700, which is a land reserved for open space. Therefore, the acquisition of land for the purpose of bus-stand contravenes the draft Development Plan. It is also argued that the petitioners are residing over the land in question, therefore, the residential houses constructed by the petitioners are liable to be exempted from acquisition. Mr. Bali has also referred to a judgment of the Hon'ble Supreme Court reported as Ghaziabad Development Authority and State of U.P. Vs. Delhi Auto and General Finance Pvt. Ltd. and Maha Maya General Finance Co. Ltd. and another, to contend that any acquisition, which is not in tune with the National Capital Region Planning Board constituted under the National Capital Region Planning Board Act, 1985 cannot be sustained.

10. On the other hand, Ms. Monga submitted that acquisition of land for a public purpose is not dependent upon the use, as specified in the Development Plan. Even after acquisition, the Development Plan can be amended or modified, but simply for the reason that the Development Plan does not contemplate the purpose of acquisition, the acquisition cannot be said to be illegal or unwarranted.

11. The draft Development Plan of Rewari - 2021 was published on 28.02.2007 in respect of drawing dated 13.02.2006 (Annexure R-1). The site marked as No. 700 is reserved for open space, whereas site No. 420 is, inter alia, reserved for roads, transport depot and parking areas. Such development Plan is published under Section 5 of the 1963 Act. It is stated that Clause XX is identical in the draft Development Plan - 2021 and draft Development Plan - 2031. Clause XX of the Development Plan reads as under:

"XX. Relaxation of development plan:

Government may in case of hardship or with a view to save any structure constructed before the material date, relax any of the provisions of the Development Plan on principles of equity and justice on payment of such development charges and on such other conditions as it may deem fit to impose."

12. Section 24 of the 1963 Act also confers power on the State Government to change the use of land. Section 24 reads as under:

"24. Nothing in this Act shall effect the power of the Government or any other authority to acquire land or to impose restrictions upon the use and development of land comprised in the controlled area under any other law for the time being in force, or to permit the settlement of a claim arising out of the exercise of powers

under this Act by mutual agreement."

13. It is in pursuance of such powers, the Directorate of Town & Country Planning, Haryana sought relaxation in zoning regulations to permit construction of bus-stand in open space of Sector 12, Rewari. The relaxation was granted vide the letter dated 13.07.2015, which reads as under:

"On the subject cited above, it is informed that the proposal received vide subject reference has been examined viz-?-viz the provisions made in Section 24 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 and as per provisions of this section, the Govt. has power to acquire land or to impose restriction upon the use and development of land comprised in the controlled area under any other law for the time being in force. Thereafter, the case was submitted to the Government for relaxation in zoning regulations of the Development Plan, Rewari, as the site of the proposed bus stand falls in the open space zone sector 12 of the Draft Development Plan, Rewari. Since the bus stand is public utility and for which the land has been acquired in open space zone of the Development Plan in larger public interest by Transport Deptt, the Govt. has considered the proposal and it has been decided to give relaxation in zoning regulations to permit the construction of the bus stand in open space zone of sector 12, Rewari. A copy of relevant approval is attached."

14. We have heard learned counsel for the parties and find no merit in the writ petition. The judgment referred to by the learned counsel for the petitioner is of no help to him. In the said case, two private colonizers wanted to set up a residential colony in a zone meant for recreational purposes prepared by the National Capital Region Planning Board. It was said purpose, which was not accepted. It is not a case of acquisition of land under the provisions of the Land Acquisition Act.

15. The acquisition of land for a public purpose other than the use as specified in the Development Plan has been examined by the Hon"ble Supreme Court in number of cases. In Aflatoon and Others Vs. Lt. Governor of Delhi and Others, , the Constitution Bench observed as under:

"23..... In other words, the fact that actual development is permissible in an area other than a development area with the approval or sanction of the local authority did not preclude the Central Government from acquiring the land for planned development under the Act. Section 12 is concerned only with the planned development. It has nothing to do with acquisition of property; acquisition generally precedes development. For planned development in an area, other than a development area, it is only necessary to obtain the sanction or approval of the local authority as provided in Section 12(3) . The Central Government could acquire any property under the Act and develop it after obtaining the approval of the local authority."

16. In Jai Narain and Others Vs. Union of India and Others, , the Hon"ble

Supreme Court examined the similar argument and held as under:

"12. So far as the second contention raised by Mr. Vashisht, the same is mentioned to be rejected. Whatever may be the user of the land under the Master Plan and the Zonal Development Plan the State can always acquire the same for public purpose in accordance with the law of the land. In any case the object and purpose of constructing the STPs is to protect the environment, control pollution and in the process maintain and develop the agricultural green."

17. Later in *Ajay Krishan Shinghal, etc. etc. Vs. Union of India and Others*, , the Hon"ble Supreme Court has held to the following effect:

"7.Once a public purpose has been specified by the Governor in the notification and on specification obviously on presumptive satisfaction thereof the Governor issued the notification as required under Section 4(1) ; the absence of the specification and further elaboration of the development do not have the effect of rendering the satisfaction reached by the Governor illegal and the notification under Section 4(1) published by the Governor in exercise of the power of eminent domain is not rendered void. Therefore, it is not necessary to elaborately deal in detail with the manner in which the development has to be undertaken when the land is situated within the cantonment area. In fact, Section 12(3)(ii) of the Development Act takes care of the development in cantonment area when there would be a conflict between the authorities under the Development Act and the need for prior approval in that behalf of the cantonment, which is a local authority, for developing land under the Development Act. As a fact, except the land in question, the land in Naraina was developed as per plan. Under those circumstances, since the High Court has elaborately dealt with this aspect of the matter in the judgment running into 129 pages, we feel it unnecessary to burden this judgment with further discussion in that behalf. Accordingly, we hold that the notification under Section 4(1) is not vitiated on account of the fact that planned development was not specified with particularisation of the land in question needed for the public purpose."

18. In *Bhagat Singh Vs. State of U.P. and Others*, , the Hon"ble Supreme Court reiterated that there is no need that the land proposed to be acquired for a particular public purpose should be for the same purpose or use mentioned in the Master Plan or Zonal Plan for the said area. It has been held as under:

"22. As pointed out in the above judgments, there is no need that the land proposed to be acquired by the Government for a particular public purpose should be for the same purpose or use mentioned in the Master Plan or Zonal Plan for the said area. Nor will the acquisition be invalid merely because the land proposed to be acquired is for a purpose other than the one permitted by the Master Plan or Zonal Plan applicable to that locality. Acquisition will be valid if it is for a public purpose even if it is not for the type of user permitted by the Master Plan or Zonal Plan in force at the time the acquisition is made. It will be for the beneficiary of the acquisition to move the competent authority under the

Development Act and obtain the sanction of the said authority for suitable modification of the Master Plan so as to permit the use of the land for the public purpose for which the land is acquired. In fact, it may be difficult for the beneficiary of the acquisition to move the competent authority under the Development Act seeking permission to change of land use even before the land is acquired or before possession is given to the beneficiary. On the principle stated in Aflatoon case (*supra*) it is clear that acquisition for a public purpose and obtaining permission from the competent authority under the Development Act concerned for change of land use are different from one another and the former is not dependent upon the latter."

19. In view of the aforesaid judgments, we have no hesitation to hold that the purpose of acquisition cannot be permitted to be disputed only for the reason that in the Development Plan published under the 1963 Act has contemplated different use for the area in question. It may be noticed at this stage that even the user of the land stands amended in terms of Section 24 of the 1963 Act as also Clause XX of the Draft Development Plan - 2021 and Draft Development Plan - 2031. The land in question is now contemplated to be used for bus-stand.

20. In view of the above discussion, we do not find any merit in the present set of writ petitions. The same are dismissed.