
(2008) 12 P&H CK 0146
In the Punjab And Haryana At Chandigarh

Smt. Mirdula Joshi

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 4, 48, 5A, 6

Citation : (2009) 153 PLR 308 : (2009) 1 RCR(Civil) 536

Hon'ble Judges : M.M. Kumar, J;Jora Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The instant petition is directed against the notification bearing No. LAC(P)-NTLA-99/1181, dated 16.3.1999, issued u/s 4 and declaration bearing No. LAC(P)-NTLA-2000/1593, dated 15.3.2000 made u/s 6 (Annexure P-3 and P-5) of the Land Acquisition Act, 1894 (for brevity, "the Act"). The public purpose of acquisition is the development and utilization of land for residential, commercial, institutional and recreational purposes in Sector 1, 2, 3, 5B, 5C and 6 Panchkula Extension (Mansa Devi Complex) under the Haryana Urban Development Authority Act, 1977 by the Haryana Urban Development Authority, in the area falling in the revenue estates of village Saketri (Hadbast No. 376) and Bhainsa Tibba (Hadbast No. 377), Tehsil and District Panchkula.

2. Brief facts of the case are that the petitioner was owner of land measuring 3 kanals 0 marlas, situated in Khewat/khatoni No. 244/370, Khasra No. 69//32/3, as per jamabandi for the year 1985-86 and mutation bearing No. 1381 was entered in her favour. The land continued to be in her name in the revenue record as is evident from jamabandi for the year 2000-2001 (P-1). There was a garden on the land in question and it has been recorded as "bagh barani" in the revenue record (P-2).

3. On 16.3.1999, a notification u/s 4 of the Act was issued, which included the land of the petitioner (P-3). It is claimed that objections u/s 5-A of the Act were

filed and request was made for release of the land on the ground that there was a garden and some construction was also raised before Section 4 notification (P-4). However, on 15.3.2000, declaration u/s 6 of the Act was issued acquiring the land belonging to the petitioner and other land owners (P-5). However, the petitioner continued making representations for release of the land (P-6 (colly)). On 1.7.2003, a notice was issued to the petitioner by the Land Acquisition Collector calling her to appear on 14.7.2003 (P-7). The award was announced on 9.10.2003. In para 8 of the petition she has averred that land belonging to the influential persons has been released even after announcement of award dated 9.10.2003. In this regard it has been alleged that the land of one Maharaja, who was having one garden as well as the land falling under Khasra No. 59//5/2 Min. 6, Min 15/11 Min. 60//1 Min. 10/2 Min. total measuring 9 Kanals 10 marlas belonging to one Shri R.S. Malik has been released vide Memo No. S-2-08/2382, dated 3.3.2008 (P-8).

4. On 15.7.2008, when the matter came up for consideration, learned Counsel for the petitioner raised the issue of discrimination by release of land of Shri R.S. Malik vide order dated 3.3.2008 (P-8) after announcement of award. On his oral request, the Division Bench permitted impleadment of Shri R.K. Malik as respondent No. 5, who has since been served and represented by counsel. Notice was also issued to the respondent State to show cause as to why order dated 3.3.2008 be not set aside.

5. In the written statement filed on behalf of respondent Nos. 1 and 2 the stand taken is that there is no legal infirmity in issuing notification u/s 4 and declaration u/s 6 of the Act and acquisition procedure has been religiously followed. It has been asserted that the instant petition deserves to be dismissed on the ground that the same has been filed after announcement of award dated 9.10.2003. The award in respect of super structures etc. was also announced on 14.7.2008. The possession of the land was taken and handed over to the HUDA on the day of award u/s 16 of the Act except the land for which orders of stay, status quo and dispossession have been passed by any court. The objections u/s 5-A of the Act filed by the land owners were heard on 1.2.2000 and 28.2.2000 and proper opportunity of hearing was afforded. Therefore, report by the Land Acquisition Collector with recommendation was sent to the Government for final decision. The land which could be adjusted in the plan was left out from acquisition after considering the objections. It has been disputed that the petitioner has filed objections u/s 5-A of the Act within the prescribed period of limitation. It has further been pointed out that the objections (P-4) which has been placed on record by the petitioner were filed by the illegal heirs of one Rehmandeen son of Rulia in respect of Khasra No. 107//2/2 and the petitioner has claimed ownership of Khasra No. 69//32/3, therefore, the aforementioned objections have no relevancy with the present case. Regarding release of land out of acquisition it has been submitted that the Government is competent to release the land. In that regard, reliance has been placed on the judgment of Hon'ble the Supreme Court in the case of Anand Buttons Ltd. Vs. State of

Haryana and Others, . With regard to release of land belonging to Shri R.S. Malik-respondent No. 5 and the Maharaja, it has been stated that the same was released at the Government level. However, fresh notifications under Sections 4 and 6, dated 16.5.2007 and 27.3.2008 respectively, have been issued to acquire the same.

6. In the written statement filed on behalf of Shri R.S. Malik-respondent No. 5 it has been claimed that on the land in question school and residential buildings were constructed in the year 1979 and 1990 after sanctioning of the building plans by the concerned authorities of the respondent State. It has been further submitted that his land was sought to be acquired due to his personal grievances with former Chief Minister, Haryana Late Shri Bansi Lal. In that regard, respondent No. 5 has placed on record certain news items as Annexures R-5/1 to R-5/5. Respondent No. 5 also pointed out that in the year 1981 also his land was sought to be acquired by the respondent State but ultimately the same was released in the year 1984 on account of the fact that a farmhouse was constructed on the land since the year 1979 by his father, namely, Late Shri Des Raj, with prior approval of the State Government.

7. In sub-para (iii) of para 3 of the written statement respondent No. 5 has stated that in C.W.P. No. 12218 of 2003 the respondents have defended the acquisition of the school land and building on a false ground that the land fall within 100 metre wide non-buildable zone along the railway line and the land was required for expansion of railway track and also by the Mansa Devi Shrine Board for mela parking during Navtrass days. However, when information was sought by him, the Railways and Shrine Board have denied that the land was required by them.

8. Respondent No. 5 has also claimed that the Land Acquisition Collector has rejected the recommendation and report of the District Town Planner, dated 22.9.2003, which was to the effect that the buildings were constructed by the family members of respondent No. 5 with prior approval of the State Government and the vacant land is fully covered by the green trees and site is not suitable for mela parking or any other public purpose. In 2000 affiliation was also granted by the CBSE to the school and Haryana Government has also given recognition to the School as Senior Secondary School w.e.f. 1.1.2005. At present about 950 boys and girls are studying in the school. There is no other English medium school in the near vicinity of village Bhainsa Tibba, village Saketri or in the Mansa Devi Complex to meet the educational requirement of about 20,000 residents.

9. While admitting abuse of statutory powers by the officials of the State Government in acquiring and releasing lands and buildings, it has also been pointed out that the respondent State has left out about 20 acres of land of Shri Shyam Sunder, Liquor Contractor and Coloniser adjacent to the Valley Public School in Village Bhainsa Tibba, whereon several showrooms and residential houses were constructed in 1986-90 without any approval of the competent authority.

10. Regarding release of about 5 acres of land falling under buildings and school after announcement of award, respondent No. 5 has stated that on his representations, the Chief Secretary, Haryana after detailed discussions with the concerned authorities made a recommendation on 13.4.2007 regarding release of land (R-5/13). Later on even the State Government framed a policy dated 26.10.2007 for release of notified lands (R-5/14). On 29.12.2007, respondent No. 5 submitted another representation to the Commissioner, Urban Estates and the Chief Minister for passing final order on the report of the Chief Secretary, dated 13.4.2007 (R-5/16). The respondent State finally approve the recommendations of the Chief Secretary vide order dated 5.1.2008, subject to the condition that he would withdraw all cases/representations pending before various Courts/Government and surrender his claim to the other land except the part of the land being released. Ultimately, land measuring 9 Kanals 10 marla was released vide order dated 3.3.2008 on which School and two farm house buildings have been constructed since 1979 and 1990.

11. After hearing learned Counsel for the parties at a considerable length and perusing the paper book with their able assistance, we are of the considered view that there is no merit in the instant petition and the same is liable to be dismissed. The principal question which arises for determination is whether there is any scope for issuing direction to the respondents to de-notify the land from acquisition after the award has been announced and possession has been taken. The aforementioned question is not res Integra. Hon'ble the Supreme Court has considered the aforementioned question in the case of Rajasthan Housing Board and Others Vs. Shri Kishan and Others, . Apart from answering various other questions in concerned matter decided, the question in issue raised before us was answered in Writ Petition (C) No. 280 of 1989. After noticing the correspondence between the Urban Development and Housing Department of Rajasthan Government and Rajasthan Housing Board, their Lordships proceeded to answer the question in para 26 of the judgment, which reads thus:

26. We are of the further opinion that in any event the government could not have withdrawn from the acquisition u/s 48 of the Act inasmuch as the Government had taken possession of the land. Once the possession of the land is taken it is not open to the government to withdraw from the acquisition. The very letter dated February 24, 1990 relied upon by the counsel for the petitioner recites that "before restoring the possession to the society the amount of development charges will have to be returned back....

This shows clearly that possession was taken over by the Housing Board. Indeed the very tenor of the letter is, asking the Housing Board as to what development work they had carried out on the land and how much expenditure they had incurred thereon, which could not have been done unless the Board was in possession of the land. The Housing Board was asked to send the full particulars of the expenditure and not to carry on any further development works on that land. Reading the letter as a whole, it cannot but be said that the possession of

the land was taken by the Government and was also delivered to the Housing Board. Since the possession of the land was taken, there could be no question of withdrawing from the acquisition u/s 48 of the Land Acquisition Act, 1894:

(emphasis added)

12. Again in the case of *Mandir Shree Sitaramji alias Shree Sitaram Bhandar Vs. Land Acquisition Collector and Others*, , the provisions of Section 48 of the Act fell for consideration of Hon''ble the Supreme Court and in passing remark, it was observed that once possession is taken the Government cannot withdraw from acquisition u/s 48 and the contrary contention raised in that regard was rejected.

13. Another opportunity to consider the same very question arose before Hon''ble the Supreme Court in the case of *P.K. Kalburai v. State of Karnataka* (2005)12 S.C.C. 489. The specific question raised was whether the Government was justified in releasing a portion of land from acquisition. A cognate question was also decided, namely, what is the meaning of taking possession. In other words, whether it is actual or symbolic possession. Answering the first question, it was held that once the possession is taken then there is no room for the Government to release the land from acquisition by de-notifying the same. In respect of the second question, it was observed that if the land is plain then symbolic possession itself would be sufficient by making entry in the revenue record.

14. Moreover, in the case of *Gurkirpal Singh Vs. Financial Commissioner (Revenue) and Secretary, Government of Punjab, Department of Revenue and Others*, , decided on 9.5.2008, the question as to whether the acquired land could be de-notified after the award and proceed after taking of possession u/s 16 of the Act, also came up for consideration before a Division Bench of this Court of which one of us (M.M. Kumar, J.) was a member. The challenge in the said petition was to a notification dated 23.2.2007 whereby the earlier notifications issued u/s 4 and 6 of the Act were de notified by the State Government. The Division Bench after referring to the provisions of Section 48 of the Act discussed a catena of judgments in detail and came to the conclusion that once the possession has been taken there is no possibility of the respondent-State to de-notify the acquisition. After placing reliance on the judgments of Hon''ble the Supreme Court in the case of *Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others*, and *Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others*, , the Division Bench also rejected the argument that physical possession of the land remained with the petitioner and it has been held that usual mode of taking possession by the government is by making entry in the *Rapat Roznamcha* immediately after announcement of award. In somewhat similar circumstances, we have also dismissed C.W.P. No. 687 of 2008 *Smt. Asha Malik and Anr. v. State of Haryana* and Ors. vide order dated 2.12.2008.

15. We repeatedly asked Mr. Babbar Bhan, learned Counsel for the petitioner as

to how a direction for release of land acquired in 1999-2000 could be issued after the award has been announced and possession of the land is taken, he has not been able to cite any contrary law or give answer to our query.

16. Even otherwise it is well settled that no writ petition would be competent after passing of award because possession of land was taken and it is deemed to be vested in the State Government. In that regard reliance has rightly been placed by respondent Nos. 1 and 2 on the judgments of Hon''ble the Supreme Court rendered in cases of *Star Wire (India) Ltd. Vs. State of Haryana and Others*, , *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, , *C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others*, and *Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others*, . In the instant case it is conceded position that award was announced on 9.10.2003 and the writ petition has been filed on 14.7.2008 i.e. after more than 4-1/2 years.

17. A close scrutiny of various orders passed by this Court shows that respondent No. 5 was put on notice in respect of order dated 3.3.2008 releasing his land after award and possession. In that regard reference may be made to the interlocutory order dated 15.7.2008. It was thereafter that respondent No. 5 has filed a separate detailed written statement to defend order dated 3.3.2008.

18. During the course of hearing we repeatedly posed a question to Mr. B.R. Gupta, learned Counsel for respondent No. 5 that once the award has been announced and possession of the land has been taken then how can the power u/s 48 of the Act could be exercised. Mr. Gupta has not been able to answer the aforementioned query except stating that the State Government has exercised its discretion and even policy has been framed on 26.10.2007 (R-5/14). The petitioner has not been able to substantiate the allegation concerning release of land of "Maharaja" after award. There is nothing on record to that effect.

19. At this stage it would be apposite to take notice of clause 1 and 2 of the policy dated 26.10.2007 (R-5/14) which reads thus:

1) No request will be considered after one year of award. Only those requests will be considered by the Government where objections u/s 5-A were filed.

2) Any request for application where structures have been constructed will only be considered for the release u/s 48(1) provided the structure exists prior to Section 4 and is inhabited.

3) to 6) xxxx

Provided that the Government may release any land on the grounds other than stated above u/s 48(1) of the Act under exceptionally justifiable circumstances for reasons to be recorded in writing.

20. A perusal of the aforementioned clause of the policy would show that it is impregnated with the illegality, inasmuch as it arms the Government with the

power to release land from acquisition within one year after the award. In other words, the award could be passed without taking possession of the land for one year. This is factually against the ground realities because on the day of announcement of award possession of the land is ordinarily taken. In the present case also it remains undisputed that the award was announced on 9.10.2003 and the possession of the acquired land was handed over to HUDA-respondent Nos. 3 and 4 on 9.10.2003 itself. The factual position is evident from para 1 of the preliminary objections of the written statement filed by HUDA-respondent Nos. 3 and 4. Therefore, there would be rare possibility of announcing an award without taking possession. It could only be where court has passed interim order which is not the position in this case. Therefore, we have not been able to persuade ourselves to approve clause 1 of the policy, which provide for entertaining of an application within one year after announcement of award. The power is also being misused by releasing that land in respect of which award has been announced and possession has been taken as is evident in the present case.

21. We are further of the view that power to release land from acquisition before the stage of issuing declaration u/s 6 of the Act should not be the rule but only an exception and power u/s 48(1) should be used sparingly. By doing so law and life would be on talking terms otherwise they would be distant neighbours. But it all depends on the machinery of the State which must be geared to achieve maximum welfare of its citizens. In a large number of cases which have come up for hearing before us, no survey is carried out before issuing notification u/s 4 of the Act, which result into extreme harassment to the general public who have constructed their houses, factories or other buildings before issuance of notification u/s 4 of the Act. The respondent State of Haryana is pursuing the policy of excluding the constructed area built before issuance of notification u/s 4 as is evident from clause 2 of the policy dated 26.10.1997 (R-5/14), which has been extracted in para 19. To achieve that object the Land Acquisition Collector or any other officers of the Town and Country Planning Department etc. should be under an obligation to first undertake a detailed survey of the site for which notification u/s 4 is proposed to be issued. A notification u/s 4 of the Act should be issued by excluding the constructed area as per the policy, which would avoid unnecessary harassment to the general public. A notification u/s 4 is required to be prepared by including only that area, building or construction which are absolutely necessary for executing the public purpose. It has been seen in a large number of cases that notification u/s 4 of the Act is issued for acquisition of say 500 acres of land by the time declaration u/s 6 of the Act is published, only 100 acres of land is intended to be acquired. It shows wanton disregard of clause 2 of the policy of the Government, dated 26.10.2007 (R-5/14). It appears that without any regard to the policy of the Government, notifications u/s 4 of the Act at ease are being issued by including large area with construction and then such areas are excluded from acquisition by not including the same in the declaration issued u/s 6 of the Act. This leads to flourishing of Bududom, illegal activities and exploitation of the general public because their houses/ hutments come under

the threats of being acquired after issuance of notification u/s 4 of the Act. Therefore, necessary directions in that regard are required to be issued.

22. As a sequel to the above discussions, we pass the following directions:

- a) The writ petition filed by the petitioner is hereby dismissed;
- b) Order dated 3.3.2008 (P-8) releasing the land belonging to respondent No. 5, measuring 9 Kanals 10 marlas, comprised in Khasra No. 59//5/2 Min, 6 Min, 15/1/1 Min, 60//1 Min, 10/1 Min, is also hereby quashed;
- c) Clause 1 of the policy instructions dated 26.10.2007 (R-5/14) is declared illegal; and
- d) The respondent-State of Haryana is directed to issue comprehensive instructions to all the Land Acquisition Collectors of the State, Officers of the Town and Country Planning Department, various agencies like HUDA, HSIIDC or other to undertake a comprehensive survey before sending the proposal to the Government for issuance of notifications u/s 4 of the Act. The concerned officers are to ensure that clause 2 of the policy of the State, dated 26.10.2007 for releasing the structures, which have been built up prior to issuance of notification u/s 4 of the Act are not included in the proposal for acquisition. Such instructions would bring proximity between law, life and justice which look to be distant neighbours in the present scenario. It would avoid unnecessary harassment to the general public who might have constructed small houses on the land proposed to be acquired. It would also discourage the construction activity after issuance of notification u/s 4 of the Act or the tendency of some unscrupulous element to claim that the building was constructed prior to issuance of notification u/s 4 of the Act. These steps in turn would reduce the disputes between the general public and the State paving the way for developing peaceful society and avoiding litigation.

23. The needful shall be done within a period of two months and a compliance report in that regard be placed on record on or before 2.3.2009.

A copy of this order be given to Ms. Palika Monga, Assistant Advocate General, Haryana for onward transmission to the Chief Secretary, Haryana.