
(2009) 01 P&H CK 0234
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 10223 of 2008

Smt. Sumitra Devi and Others	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Haryana Development and Regulation of Urban Areas Act, 1975 — Section 18, 3
Haryana Municipal Act, 1973 — Section 203
Land Acquisition Act, 1894 — Section 4, 6, 8

Citation : (2009) 1 ILR (P&H) 999 : (2009) 5 RCR(Civil) 686

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

Bench : Division Bench

Advocate : Ashish Kapoor, Addl. AG for Respondent Nos. 1 to 4, for the appearing parties; Sanjay S. Chauhan, for the Respondent

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution prays for quashing order dated 31st March, 2008 (P-I) passed by the Director, Urban Development, Haryana-Respondent No. 2, withdrawing his earlier order dated 23rd November, 2007 (P-I1) whereby sanction was accorded to the building plans of the Petitioners as per lay out plan attached with the resolution dated 12th February, 1999 passed by the Municipal Council, Hissar-Respondent No. 6. A further prayer has been made for directing the Municipal Council, Hissar-Respondent No. 6 to approve the pending as well as building plans submitted by the Petitioners in accordance with the approved lay out plan dated 12th February, 1999. Still further a prayer has been made for directing the Respondents to implement Award No. 3H, dated 2nd August, 2001 and to honour the agreement reached between the Petitioners/land owners and the State of Haryana through Commissioner and Secretary, PWD (B&R) and the Deputy Commissioner, Hissar-Respondent No. 5.

2. Brief facts of the case are that the Petitioners are land owners of the area falling between Gurudwara and Parijat Chowk and behind Neelam Theatre,

Hissar. The PWD (B&R) Haryana approved the project for improvement of Delhi-Hissar-Sirsa Road and to reduce the traffic congestion from Parijat Chowk to Gurudwara Chowk in the city of Hissar. The land belonging to the Petitioners was earmarked to construct the alternative road. On 26th January, 1999 a notification u/s 4 of the Land Acquisition Act, 1894 (for brevity, "the Act") was issued for acquiring the land for the aforementioned project followed by declaration dated 3rd August, 1999 u/s 6 of the Act. Since the land in question was situated in a commercial zone and huge compensation was required to be paid as a consequence of acquisition, the Government decided to acquire the land through negotiations, which were carried out by the Deputy Commissioner, Hissar-Respondent No. 5. As a result of negotiations, the Petitioners agreed to give up their 1941 square yards land falling under road "free of cost", subject to certain conditions. The Petitioners requested that the lay out plan of area, which was submitted to the Municipal Council, Hisar be approved after incorporating the proposed road in it (P-2). They also furnished affidavit to this effect on the asking of the Deputy Commissioner-Respondent No. 5 (P-3).

3. It is claimed that the Petitioners also deposited the required development charges with the Municipal Council-Respondent No. 6. A copy of one such receipt, amounting to Rs. 5,08,800, deposited by Dharam Chand son of Banarsi Dass, Gagnesh Kukereja, Deepak Kumar and Sumitra Devi has been placed on record (P-4). On 10th September, 1999, the Petitioners were informed by the Municipal Council-Respondent No. 6 about passing of resolution dated 12th February, 1999 and final approval of the lay out plan subject to certain conditions to be fulfilled by them (P-5 & P-6). The Petitioners have claimed that the Respondents failed to construct or demarcate the road at site in terms of the lay out plan dated 10th September, 1999. On 21st June, 2001, another affidavit was furnished by the Petitioners.

4. The Petitioners have asserted that some of the land owners were also compensated by the Respondents by way of allotment of alternative pieces of commercial land belonging to the Improvement Trust, Hisar in the vicinity of the area. The Deputy Commissioner-Respondent No. 5 also prepared a proposal and sent the same to the Government for approval, which was conveyed by the Commissioner and Secretary, Urban Development, Haryana on 30th July, 2001. On the basis of the aforementioned approval, the Land Acquisition Collector passed an Award bearing No. 3H District Hisar, dated 2nd August, 2001, u/s 8 of the Act (P-8). From the perusal of award it is clear that the land belonging to the Petitioners was taken by the Government free of costs and in consideration thereof, the Government has accepted the proposal of the Deputy Commissioner-Respondent No. 5.

5. In 2007, the PWD (B&R) Department, Haryana constructed the road and the Petitioners also constructed the parking site and allied works at their own costs and expenses. Two plots out of the approved lay out plan were also purchased by Smt. Krishna Devi w/o Shri Sat Parkash and Smt. Naresh Kumari wife of Shri

Ravi Kumar. They submitted their building plans to the Municipal Council-Respondent No. 6 for approval but the same were kept pending.

6. In the meanwhile, a civil suit was filed by Vastvikta Society in the Court of Civil Court at Hisar challenging the proceedings of the Respondents and for utilisation of the land of the Petitioners for parking. The Director, Urban Development, Haryana and the Municipal Council were also made parties. On 3rd October, 2007, the Petitioners made a representation to the Commissioner and Secretary, Urban Development, Haryana, seeking his intervention in the matter (P-9). The said representation was sent to the Director-Respondent No. 2 for enquiring into the matter. On 29th October, 2007, the Executive Officer, Hisar, submitted his report to the Director-Respondent No. 2 by detailing the entire chronology of events and sought guidance in the matter (P-10). On 23rd November, 2007, the Director-Respondent No. 2 directed the Municipal Council-Respondent No. 6 to pass the building plans of Grover Market as per approved lay out plan dated 12th February, 1999 and that the Court case against the lay out plan be defended (P-II). Thereafter, reply was filed in the civil suit by taking the stand that the lay out plan has been sanctioned keeping in view the fact that land was given to the Government free of cost and a resolution to this effect was passed by the Municipal Council, Hisar on 12th February, 1999.

7. The building plans of Smt. Krishna Devi wife of Shri Sat Parkash and Smt. Naresh Kumari wife of Ravi Kumar were also approved by the Municipal Council-Respondent No. 6 on 9th January, 2008 (P-12 to P-15) and they raised construction as is evident from various photographs placed on record (P-16). However, all of a sudden, the Director-Respondent No. 2 passed an order on 31st March, 2008, withdrawing his earlier order dated 23rd November, 2007, without assigning any reason. The Deputy Commissioner-Respondent No. 6 was directed to cancel resolution dated 12th February, 1999 alongwith the lay out plan (P-I). The aforementioned order dated 31st March, 2008 is subject matter of challenge in the instant petition.

8. In the written statement filed on behalf of Respondent Nos. 1 and 2 the factual position as narrated above has been admitted. However, the stand taken is approval to the lay out plan has not been granted by the competent authority. It has been asserted that as per Section 203 of the Haryana Municipal Act, 1973 (for brevity, "the 1973 Act") and Section 3 of the Haryana Regulation of Urban Areas Act, 1975 (for brevity, "the 1975 Act"), Respondent Nos. 5 and 6 are not competent to sanction the lay out plan for commercial market/colony. The same can only be obtained from the Secretary, Urban Local Bodies Department, Haryana, Chandigarh, being the competent authority to grant approval to a Town Planning Scheme. It has further been stated that the Director has passed order dated 23rd November, 2007 for sanctioning the building plans inadvertently because he was not fully aware of the facts. An inquiry into the matter is being initiated. However, on coming to know the entire factual matrix the order dated 23rd November, 2007 has been withdrawn on 31st March, 2008.

9. In the written statement filed on behalf of Respondent Nos. 5 and 6 it has been asserted that they have merely acted upon the directions and advice received from the Director-Respondent No. 2 and they have no role to play. They have also pleaded that since no relief against them has been claimed by the Petitioners, therefore, writ petition qua them is liable to be dismissed. However, the factual position has been admitted. Similarly written statement has been filed on behalf of the Land Acquisition Collector on behalf of Respondent Nos. 3 and 4.

10. Controverting the stand taken by the Respondent, the Petitioners also filed replication asserting that no inquiry is required to be conducted because everything has been done at the level of the Government and the Deputy Commissioner-Respondent No. 5 has acted only as mediator between the Government and the landowners. The decision that lay out plan of the area shall not be disturbed except including the strip of land for the construction of proposed road, was taken at the Government level. Even the order dated 23rd November, 2007, was issued after approval of the Commissioner and Secretary, Urban Development Department, Haryana. Applicability of the provisions of Section 203 of the 1973 Act and Section 3 of the 1975 Act has been denied in the present case. It has been submitted by the Petitioners that in the year 1999 there was no requirement of obtaining any licence and the Municipal Committee had the power to pass the lay out plans for any area falling within its jurisdiction. In that regard provisions of Section 18 of the 1975 Act have been referred.

11. After hearing learned Counsel for the parties, we are of the considered view that this petition deserves to succeed and the impugned order dated 31st March, 2008 passed by the Director, Urban Development, Haryana-Respondent No. 2 is liable to be set aside. It has come on record that the Petitioners have surrendered their land measuring 1941 sq. yards falling under road as free of cost, subject to certain conditions. He had requested that lay out plan of the area which were submitted to the Municipal Council, Hisar be approved after incorporating the proposed road in it. They have also deposited development charges with the Municipal Council Respondent No. 6. A resolution dated 12th February, 1999 (P-6) was passed and intimating was sent to the Petitioners on 10th September, 1999 (P-5). The Deputy Commissioner-Respondent No. 5 had prepared a proposal and had sent the same to the Government for approval. Thereafter, the Commissioner and Secretary, Urban Development, Haryana has conveyed the approval on 30th July, 2001. It was on the basis of the approval that the Land Acquisition Collector passed an award No. 3H, District Hisar, dated 2nd August, 2001, u/s 8 of the Act (P-8). A perusal of the award shows that the land measuring 1941 sq. yards was offered by the Petitioners free of cost with some conditions, which are as under:

1. The passage of the old road of improvement trust adjacent to our land toward North side need not be disturbed and a clear opening on this road be allowed/maintained.

2. Consequent upon non-existence of proposed road at the site the land was left

by approximation and lay out plan which have already been approved accordingly by the Municipal Council, Hisar. The development works have been completed due to non construction of road to date. This lay out plan will also be deemed to have been approved after construction of road and also in the circumstances of an change needed due to change in alignment etc.

3. That further our offer for giving our land free of cost is valid in case the metalled road is constructed within 12 months from this date. He also made it clear that he has already submitted this request by submitting an affidavit in the past and he still endorse it.

12. The Land Acquisition Collector took into consideration the heavy financial burden in acquiring the land and after noticing offer made by the Petitioners requested the Deputy Commissioner, Hisar to acquire the land by negotiation in terms of Financial Commissioner Standing Order No. 28. Accordingly, the Deputy Commissioner analyzed the property into four parts. Part-I included the land owned by the Government and Part-II discussed the property measuring 1941 sq. yards owned by the private individuals but being made available to the Government free of cost for this project. The aforesaid property belongs to the Petitioners which is the subject matter of consideration in the instant petition. The proposal made by the Deputy Commissioner was agreed to by the Petitioners as well as other interested persons and affidavits in that regard were also submitted. The proposal was accepted by the Government which was conveyed by the Commissioner vide its order dated 30th July, 2001. With regard to the land of the Petitioners under the heading "mode of payment", the Land Acquisition Collector noticed that the land measuring 1941 sq. yards was offered free of cost and no compensation would be admissible to the Petitioners. Accordingly, the possession of the land was taken as per the award dated 2nd August, 2001. Thereafter, the Petitioners pursued the implementation of the award by moving an application dated 3rd October, 2007 (P-9) to the Commissioner and Secretary-Respondent No. 1. The Executive Officer submitted his report to the Director, Urban Development-Respondent No. 2 (P-10) stating that the land belong to the Petitioners has been acquired for the construction of the road without paying any compensation and in consideration thereof, the Government of Haryana had accepted the conditions laid down in the affidavits by the land owners which has been duly approved by the Government. The proposal sent by the Executive Officer was accepted,--vide letter dated 23rd November, 2007, which read as under:

After examining the matter and record sent by you vide your letter under reference and in supersession of this office letter No. CTP-AII/02007/23887, dated 7th June, 2007, it is clarified that the building plans of Grover Market, Hisar be passed as per layout plan passed by the Municipal Council Hisar vide their resolution No. 2 dated 12th February, 1999 and defend the court case as per reply already sent by you vide your letter No. 309/perpokar dated 27th April, 2007 (copy enclosed) under intimation to this office.

A copy of the same set was endorsed to one of the owner of the land namely Vijay Grover. The applications for sanction of site plan sent by sine of the purchaser namely Smt. Krishna Devi and Naresh Kumari were also granted sanction on 9th January, 2008, who have raised construction. Similar sanction was also accorded to Shri Vijay Grover and other Petitioners,--vide order dated 9th January, 2008 (P-14 and 15) and they have also raised construction. The photographs Annexure P-16 show raising of constructin upto second storey. Therefore, it is not possible to accept that at this stage, the Government would go back and would withdraw earlier order dated 23rd November, 2007 (P-11) by passing an order dated 31st March, 2008. It stands established that the surrender of land by the Petitioners "free of cost" to the Government on various conditions has been duly accepted vide order dated 23rd November, 2007 and the award dated 2nd August, 2001 (P-8). Above all these orders stand implemented. Even the properties have exchanged hands and the rights of third parties have come into existence. To cancel the order dated 23rd November, 2007 at this stage would be highly unjust and unfair. The only possibility of passing such an order could have been on account of active misrepresentation on the part of the Petitioners or any fraudulent act on their part. There is not even a whisper of any such thing, therefore, the order dated 31st March, 2008, is liable to be set aside.

13. The argument of the Respondent that the Municipal Council was not competent to accord sanction to the building plans of Grover Market by citing the provisions of Section 203 of 1973 Act and Section 3 of 1975 Act has failed to impress us because all the sanctions have been accorded by the Director,--vide its order dated 23rd November, 2007 (P-I1). Therefore, it cannot be accepted that sanction was accorded inadvertently.

14. As a sequel to the above discussion, the writ petition succeeds. The order dated 31st March, 2008 (P-I) is quashed and a declaration is given in favour of the Petitioners that sanction accorded to their building plans as per layout plan attached with the resolution dated 12th February, 1999 passed by the Municipal Council, Hisar would continue to hold good. The Municipal Council, Hisar is further directed to approve the pending as well as new building plans submitted by the Petitioners as per the approved layout plan dated 12th February, 1999 in accordance with the award dated 2nd August, 2001 in respect of the Petitioners. The needful shall be done within a period of four months from the date of receipt of copy of this order.

15. The writ petition stands disposed of in the above terms.