
(2008) 12 P&H CK 0121

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil Writ Petition No. 184 of 1984

Surat Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

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

Citation : (2010) 5 RCR(Civil) 607

Hon'ble Judges : Surya Kant, J

Judgement

Surya Kant, J.

1 This writ petition seeks quashing of the notifications dated 10.1.1983 (Annexure P1) and 7.1 .1983 (Annexure P4), issued under Sections 4 & 6 of the Land Acquisition Act, 1894 (in short the Act) respectively, whereby land measuring 242.73 acres of village Jharsa, District Gurgaon, including that of the petitioners, has been acquired for the development of institutional area in Sector 32, Gurgaon.

2 As per the petitioner's case, they are the owners of land measuring 123 kanal 4 marla situated within the revenue estate of village Jharsa, Tehsil and District Gurgaon. They are stated to have constructed a Mandir (temple), besides a Samadh of their ancestors, surrounded by a garden having a Dharamshala and Piao (drinking water facility for the general public and cattle). The petitioners have averred that they have also constructed a residential house, farmhouse and quarters for their servants and sheds etc. over the above mentioned land.

3 The State of Haryana issued two notifications under section 4 of the Act on 10.1.1983 (Annexure P1 & P2) whereby it decided to acquire land measuring 288.31 acres of village Jharsa for utilization by the Haryana Urban Development Authority (HUDA) for development as residential and commercial area in Sectors 31 and 32A of Gurgaon as well as another chunk of land measuring 300.32 acres for development of institutional areas in Sector 31 A Gurgaon by HUDA. The aforesaid notifications included the land owned by the petitioners.

4 The petitioners submitted their objections under Section 5A of the Act, interalia, alleging that more than 4 acres of their land was being utilized for religious purpose; there are fruit trees in another portion of the land and another part thereof was being utilized for their residential purposes or servant quarters. The State of Haryana, however, issued the notifications dated 7.12.1983 (Annexures P3 and P4) whereby land measuring 67.31 acres was acquired to develop residential and commercial areas in Sector 32A, Gurgaon and land measuring 242.73 acres was acquired for development of institutional area in Sector 32 Gurgaon.

5 The acquisition for development of institutional area included the petitioners' land also. The petitioners were thereafter served with the notices under section 9 of the Act prompting them to approach this Court.

6 Counter affidavit has been filed on behalf of the respondents. In para 2 of the written statement, a categorical stand to the following effect has been taken:

"... There is no Mandir, Dharamshalla or Samadhi in the land as mentioned by the petitioner. There is no kothi, farm house or residential quarters etc. on the land. These averments of the petitions in this para are wrong, misconceived and hence denied."

7 Similarly, in para 5 of the written statement, the respondents have averred as follows :

"That in reply to para 4 of the writ petition, it is submitted that the position explained in para 2 of the written statement is reiterated and the same may be read as part of this para. The petitioners filed objection under Section 5A and the same were considered. The petitioners were given full opportunity of being heard and they were heard at length on 9.3.1983. In token of having been heard Shri Surat Singh appended the signatures on his behalf and on the behalf of the other objectors. Hence the averments of the petitioners that they were given formal hearing is wrong, misconceived and hence denied. It has already been submitted in para 2 of the written statement that there is no Mandir, Dharamshalla or Samadh on the land as per revenue record. The petitioners have tried to mislead the Hon'ble Court by giving the wrong statement of facts." (emphasis applied)

8 It may be mentioned at this stage that the petitioners have now moved a Civil Miscellaneous application on bearing No. 2173 of 2008 seeking amendment of the writ petition in order to bring on record the "subsequent events". In the application seeking amendment as well as in the proposed amended writ petition appended thereto, the petitioners have taken the plea that during the pendency of the writ petition :

(i) they have entered into a "collaboration agreement" with M/s Premier InfraCon Pvt. Ltd. On 12.2.2007 and in terms thereof they have executed a special power of attorney/general power of attorney favour of the developer, (ii) the said developer, namely, M/s Premier InfraCon Pvt. Ltd. has applied for the grant of

licence to set up a commercial complex and has paid sum of Rs. 10.53 crores by way of demand draft along with the application; (iii) the aforesaid application is claimed to have been entertained by the Director, Town & Country Planning, Haryana and some correspondence between the builder/developer and the State Govt. is going on. It is, thus, averred that the petitioners along with their collaborators are likely to get the change of land use which would imply exemption of the petitioners' land from acquisition; and (iv) the photographs (Annexure PIA) would indicate that there is a temple and Samadh on the land and some construction is still going on; (v) adjoining lands have already been exempted and/or developed by the private developers, therefore, no public purpose shall be served by the impugned acquisition; (vi) the Govt. itself has now framed a policy dated 26.10.2007 regarding release of land from acquisition in terms whereof the subject land can be released even if acquisition proceedings have been finalized and they have sought release of their land under the said policy.

9 I have heard Learned Counsel for the parties at some length and perused the record. In my considered view, there is no merit in this writ petition. It needs to be mentioned here that I have heard Learned Counsel for the Petitioners on the premise as if the amendment in the writ petition has been allowed and the so-called "subsequent events" have also been taken into consideration.

10 The extraordinary writ jurisdiction under Article 226/227 of the Constitution is of discretionary nature. Whosoever invokes this jurisdiction must necessarily come to the Court with clean hands. In the original writ petition filed in the year 1984, the petitioners knowingly took a false plea that there existed a temple, Dharamshala, Samadh, kothi and servant quarters etc. over their land. Their false plea prompted this Court to grant interim injunction in their favour. The respondents, however, took a categorical plea as early as in their counter affidavit dated 27.5.1984 that no Mandir, Dharamshala or Samadh or kothi or farm house etc. has been constructed over the land. No rejoinder or additional affidavit to controvert the said stand was placed on record nor any material like the photographs were placed on record. The photographs now appended with the proposed amended writ petition clearly indicate that the constructions depicted therein (except one photograph) are not as old as could be in existence prior to 1984. The construction appears to have been raised by the petitioners taking undue advantage of the interim protection granted by this Court against their dispossession. The photographs further reveal that at present also, some construction activities are going on, may be at the instance of the developer with whom the petitioners are stated to have collaborated. The fact that the petitioners deliberately took a false plea and have thereafter misused the interim relief granted by this Court, is sufficient to dislodge their claim.

11 Learned Counsel for the Petitioners contends that the petitioners have been subjected to hostile discrimination, inasmuch, as the lands of similarly situated persons have been released for no rhyme or reason. He relied upon

certain instances referred to in para 12 of the writ petition. Learned State Counsel, on the other hand, pointed out the stand taken in para 12 of the counter affidavit wherein the following plea has been taken:

"That the averments of the petitioners in this para are not correct. The petitioners have not been discriminated with the similarly situated persons. No similarly situated land of any person has been left out from the acquisition. The particularly of the land, belonging to other persons mentioned in this para, have not been given by the petitioners. However, some area belonging to these persons have not been notified under Section 6 as the area is situated near the abadi of village Jharsa and is required for the extension of abadi and has been left out as a matter of policy, i.e., for extension of abadi. Thus, no discrimination has been made with the petitioners.

So far as the land of Bar Malt Factory is concerned, the land of this big factory has been left out with proportionate area. The factory is very big one and the construction is very high structure. Moreover, the factory was adjustable in the plan development and the same has been adjusted accordingly. If this fact had been acquired the State Exchequer would have also been burdened with heavy compensation."

12 It would, thus, be seen that no pick and choose policy has been adopted by the respondents while not including certain lands in the notification under Section 6 of the Act. Similarly, the respondents have given a plausible explanation for not acquiring the land of Bar Malt Factory. Neither the land of the petitioners is situated near abadi nor there existed any running factory like Bar Malt Factory. The petitioners, therefore, being not the similarly situated persons can have no grievance against those whose lands have not been included in the notification under Section 6 of the Act.

13 As regards the petitioners' allegation that they have entered into some agreement with a developer who in turn has deposited crores of rupees with the State Govt. to obtain the change of land use, in my considered view, the contention has no bearing on the validity of the notifications under challenge. No agreement to sell entered during the period when the petitioners did not possess a valid title over the subjectland, can give rise to any equity nor legitimize the release of the petitioners' land. The developer has entered into collaboration with open eyes, might be to take a calculated risk. The correspondence, if any, between him and the governmental authorities is wholly irrelevant for determining the legality of the acquisition proceedings. Suffice it to say, if the State Govt. decides to release a land which has been acquired for a "public purpose", it would, prima facie, amount to colourable and mala fide exercise of power actuated by extraneous considerations.

14 The petitioners do not dispute the categorical stand taken in the counter affidavit that the objections under Section 5A of the Act were duly considered before issuance of the notifications under Section 6 of the Act. The impugned

acquisition, thus, suffers with no illegality, procedural or otherwise, warranting interference by this Court.

15 For the reasons aforestated, I do not find any merit in this writ petition which is accordingly dismissed. No costs.