
(2008) 05 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9556 of 2008

Suresh Bansal and another

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 28-05-2008

Acts Referred:

Citation : (2009) 3 LLR 177 : (2008) 4 RCR(Civil) 27

Hon'ble Judges : M.M.Kumar, J and Sabina, J

Advocate : Mr. Akshay Bhan, Advocate., Advocates for appearing Parties

Judgement

M.M. Kumar, J.

1. This petition filed under Article 226 of the Constitution is directed against notification dated 6.5.2006 issued under section 4 of the Land Acquisition Act, 1894 (for brevity 'the Act') and declaration dated 3.5.2007 made under Section 6 of the Act (Annexures P.7 and P.11 respectively).

2. Brief facts of the case necessary for the disposal of the instant petition are that the petitioners are owner in possession of land comprised in Khewat No. 120 and Khatoni No. 148 in village Kambopura, Tehsil and District Karnal and total land is approximately 36 bighas 11 biswas comprising in khasra Nos. 267/1, 268, 269/1, 265, 266, 270, 271, 272, 273, 274, 359/1 and 360. It is claimed that the petitioners are themselves in possession of the land as per revenue record (Jamabandi) dated 23.3.2006 (Annexure P.1). The petitioners entered into partnership deed and planned to start a Light Motor Vehicle and Heavy Motor Vehicle Repairing Plant and Marble Cutting Plant. They entered into a partnership deed which was got registered with the Registrar of Firms and Societies on 24.4.2006 under the name and Style of BPS Udyog 118/7, GT Road, Karnal (Annexures P.2 and P.3). The unit was also provisionally registered with the Small Scale Industries, Department of Haryana on 31.3.2006 as also with the Custom and Excise Department on 30.4.2006 for the purposes of sales Tax (Annexure P.3A). It has further been asserted that an application was filed by the partnership firm with the Director, Urban Development, Haryana for granting

permission for change of land use and requisite fee was deposited (Annexures P.5 and P.6). However, on 6.5.2006 a notification under Section 4 of the Act was issued. The petitioner filed objection on 18.5.2006 under Section 5A of the Act by urging that the purpose of developing an industrial area, Karnal in Sector 37 is not a 'public purpose' within the meaning of Section 3(f) of the Act. Eventually declaration under Section 6 of the Act was issued on 3.5.2007. Proceedings for change of land use were also continuing side by side.

3. The petitioners have also claimed that big chunk of land adjacent to the land of the petitioners has been released as depicted in the site plan (Annexure P.13). The allegation of favouritism in releasing the land have also been made by annexing order dated 7.3.2007 (Annexure P.14) and notification (Annexure P.15).

4. Mr. Akshay Bhan, learned counsel for the petitioners has raised two arguments before us. On the basis of the site plan (Annexure P.13) and photographs (Annexures P.17 and P.18), he has submitted that there is discrimination against the petitioner in as much as the land belonging to the petitioners has been acquired and that of Modern Automobiles has been released from acquisition. According to the learned counsel, the construction raised on the land belonging to the petitioners has been fully depicted in the photographs (Annexure P.18) whereas the construction of Modern Automobile Ltd. whose land has been released, as depicted in photographs (Annexure P.17), which is almost the same. The second submission is that the development of an industrial estate is not a 'public purpose' covered by Section 3(f) of the Act and therefore on that basis no land could be acquired by putting forward the excuse of public purpose.

5. We have thoughtfully considered the submissions made by the learned counsel and have perused the paper book with his able assistance. However, we regret our inability to accept the same. It has come on record that notification under Section 4 of the Act has been issued on 6.5.2006 and declaration was made within a period of one year on 3.5.2007 (Annexure P.11). The objections filed by the petitioners under Section 5A of the Act have been duly considered and no argument has been raised pointing out any legal infirmity in that regard. The process of acquiring the land is underway which is likely to culminate in passing of award under Section 11 of the Act and taking of possession under Section 16 of the Act.

6. It may be true that the petitioner has floated a partnership firm under the name and style of BPS Udyog and has got it provisionally registered with the Small Scale Industries, Department of Haryana and with the Excise and Taxation Department. The petitioners might have also applied for change of use of land but these steps would not bind themselves to be sufficient to invoke the principles in the nature of estoppel against respondent State so as to injunct them from acquiring the land for public purpose. Therefore, we find that the acquisition of the land does not suffer from any legal infirmity.

7. The argument of the learned counsel that the petitioners have been subjected

to discrimination does not require any detailed consideration because the release of land of other land owners itself would not be a factor to conclude that there is discrimination. The question of discrimination has been repeatedly considered by Hon"ble the Supreme Court. In the case of Anand Buttons Ltd. v. State of Haryana, 2005(1) RCR(Civil) 224 : AIR 2005 SC 565 wherein the public purpose of acquiring the land for development of an industrial estate and release of some land from acquisition were under consideration. The argument that the land of other persons has been released from acquisition was rejected by their Lordships by observing as under :

"12. In our view, it is unnecessary for us to enter into this controversy. Even if we assume that the three units, who were exempted, did not qualify under the standard adopted by the State Government for exemption, at the highest, it would make the exemption granted to them vulnerable. None of them was made party to the writ petitions filed before the High Court, nor was any relief claimed against them. Even assuming that the exemption granted to the said three units was erroneous and illegal, Article 14 does not mandate that the appellants should be granted similar illegal and unjustified relief...."

8. Their Lordships also placed reliance on an earlier judgement in the case of Union of India v. International Trading Co., (2003)5 SCC 437 and approved the following para :

"... It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short the Constitution) cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality."

9. We are further of the view that the release of land in favour of objector No. 44 as depicted in order dated 7.3.2007 (Annexure P.14) is based on rational basis because objector No. 44 has pointed out that Hotel/Restaurant is in existence on the site. Likewise, objector at serial No. 46 Vijay Bala had a small piece of land and registered SSI unit which was established much prior to the issuance of notification under Section 4 of the Act. M/s Vijay Motors is also stated to be in existence for the last two years. As far as the land belonging to Modern Automobiles (Annexure P.16) is concerned, the release order was passed on the ground that there is an existing industrial unit. The land falling in 50 meter wide green belt along national Highway No. 1 has not been released. The land has

been released subject to many conditions. Therefore, the principles laid down in the case of Anand Buttons (supra) are fully applicable and it has to be concluded that there is no infringement of Article 14 of the Constitution. The first argument is therefore rejected.

10. The second submission that it does not constitute a `public purpose" is also devoid of merit. `Public purpose" included in the list under Section 3(f) of the Act is not exhaustive and is only illustrative. It is well settled that acquisition of land for establishing an industrial area is a `public purpose". In that regard reliance may be placed on the judgment of Hon"ble the Supreme Court in the case of Krishan Kumar Mills Co. Ltd. v. State of Gujarat, (1972)4 SCC 172 and Pratibha Nema v. State of M.P., (2003)10 SCC 626. Even in the case of Anand Buttons (supra) `public purpose" of acquiring the land was development of an industrial area. Therefore, there is no substance in the argument raised and the same is hereby rejected.

For the reasons recorded above, this petition fails and the same is dismissed.