
(2013) 08 P&H CK 0421

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 21130 of 2011 (O and M)

Surinder Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

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

Citation : (2014) 1 PLR 87

Hon'ble Judges : Sanjay Kishan Kaul, C.J.; Augustine George Masih, J

Bench : Division Bench

Advocate : Arun Jain and Mr. Amit Jain, for the Appellant; Kulvir Narwal, A.A.G., Haryana, for Respondents No. 1 and 2 and Mr. Kanwar Ashwani Kumar, Advocate, for the Respondent

Judgement

Sanjay Kishan Kaul, C.J.

CM No. 11780 of 2013

1. Affidavit of Under Secretary of the Government of Haryana, Public Health Engineering Department is taken on record and application stands disposed of.

Civil Writ Petition No. 21130 of 2011

The petitioners seek to assail the notifications dated 25.08.2010 u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act") and notification dated 08.04.2011 i.e. declaration u/s 6 of the said Act qua acquisition of land of the petitioners situated in village Kithwari, District Faridabad, which is sought to be acquired in public interest for construction of Sewage Treatment Plant (STP).

The second prayer made is for setting up of STP at other alternative available sites.

2. We may notice that this writ petition was linked with another Civil Writ Petition No. 22689 of 2010 which is a Public Interest Litigation qua setting up of STP

which has been disposed of by us vide a separate order of even date. Infact, the facts which have been brought on record vide CM No. 11780 of 2013 are really concerned with the second part of the relief which we have not acceded to for the reasons recorded in the writ petition No. 22689 of 2010. Learned Senior Counsel for the petitioners has thus confined his grievance in the present petition to the aspect of the consideration of the objections u/s 5-A of the said Act filed in pursuance to the aforesaid notification dated 25.08.2010 u/s 4 of the Act. In respect of the aforesaid, learned Senior Counsel has drawn our attention to the recommendations made, while considering the objections, by the District Revenue Officer-cum-Land Acquisition Collector, Palwal. The same are reproduced herein under:-

Subject: Report regarding objections u/s 5-A-Shri Diwan Singh, Smt. Pragati, Surinder Singh, Virender Singh, residents of A-90, L-New Colony, Palwal.

Regarding the above mentioned subject, the land in village Kithwari, measuring 63 Kanals 18 Marlas is being acquired for the construction of Sewerage Treatment Plant. To acquire the land, the notification has been issued by the Haryana Government in the Official Gazette u/s 4 of the Land Acquisition Act, 1894. After the time limit prescribed u/s 4, two objections were received wherein it was stated that the land should not be acquired. The notices for personal hearing were issued to the objectors.

Resultantly, spot verification was done and it was found that the land on the spot is empty irrigated land. The objectors have stated in their objections that this land is adjacent to the abadi and therefore, as per the spot, the land which is being acquired is next to the abadi. It was stated by the objectors that the land is next to the school, Community Centre and the tubewell for drinking water and therefore, it be established at least 1 K.M. away and the residents of the Harijan Basti be given justice. The land should not be acquired.

For the cleanliness of the District, it is necessary that the Sewerage Treatment Plant should be established in the District. This will lead to the cleanliness of the District.

Therefore, you are required to take a decision as to whether the above mentioned land should be acquired or not after keeping in view the objections raised by the objectors.

3. A reading of the aforesaid would show that after noticing both the points for and against the acquisition, the Land Acquisition Collector has taken no decision and infact has opined that superior authority should take a decision. Effectively, there is no recommendation at all which could have been found the basis for issuance of declaration u/s 6 of the said Act.

4. Learned Senior Counsel for the petitioners has drawn our attention to a recent judgment of the Supreme Court in Civil Appeal No. 5885 of 2013 (Gurbinder Kaur Brar and another Vs. Union of India and others) and connected appeal

decided on 22.07.2013 to contend that Supreme Court has infact deprecated the casual approach being adopted for consideration of objections u/s 5-A of the Act. Leave aside a casual approach, it is contended, that there is no recommendation at all in the present case.

5. We must note with regret the mode, manner and the casual approach of the Land Acquisition Collector in the present case where the mandate of the said Act appears to have been completely abandoned requiring the said Authority to perform its role. The provision is extracted as under:-

5A. Hearing of objections.-

(1) Any person interested in any land which has been notified u/s 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, [within thirty days from the date of the publication of the notification], object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard [in person or by any person authorized by him in this behalf] or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, [either make a report in respect of the land which has been notified u/s 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government]. The decision of the [appropriate Government] on the objections shall be final.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

6. Learned counsel for the respondents seeks to submit that in the penultimate paragraph of the report, a reference has been made to the necessity of establishing an STP for cleanliness of the district.

7. We are unable to accept this plea for the reason that the first paragraph of the report is a recital of the land; second paragraph is the nature of the objections taken (without dealing them in the report) and the third paragraph is the desirability of setting up an STP. The desirability of STP is not in question but what is the question is the location of it. There is no opinion whatsoever of the Collector. On the other hand, the last paragraph which is really the recommendation is not a recommendation but asking the superior authorities to decide the objections. Thus the Land Acquisition Collector has abandoned his role under Sub Section (2) of Section 5-A of the said Act to make a recommendation on the objections leaving the issue entirely to the concerned authorities. The concerned authorities are then required to act upon the recommendations of the

Collector but in the absence of the recommendations, there is a legal flaw in exercise of the jurisdiction by the Collector u/s 5-A of the said Act especially keeping in view the observations made in Gurbinder Kaur Brar case (supra). We have thus no option but to quash the declaration dated 08.04.2011 issued u/s 6 of the said Act qua the petitioners and all the subsequent proceedings thereafter with leave and liberty to the respondents to proceed in accordance with law in pursuance to the notification issued u/s 4 of the said Act.

The petition is allowed in the aforesaid terms leaving the parties to bear their own costs.