
(1968) 01 P&H CK 0002
In the Punjab And Haryana At Chandigarh

Tej Bhan Chugh

APPELLANT

Vs

The State of Haryana and others

RESPONDENT

Date of Decision : 25-01-1968

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1968) 01 P&H CK 0002

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : H.L. Sarin with Mr. B.S. Malik, for the Appellant; Anand Sarup, Advocate General, Haryana, with Mr. J.C. Verma, for the Respondent

Final Decision : Allowed

Judgement

P.D. Sharma, J.—Tej Bhan Chugh in his writ petition under Articles 226/227 of the Constitution of India against (1) The State of Haryana; (2) The Land Acquisition Collector and (3) The Collector, Gurgaon, has impugned the validity of notification No. 2142/ LAO dated the 29th July, 1967, copy annexure "B" on the ground that it covered the land owned by him which was built over and not waste or arable and hence the provisions made in section 17 of the Land Acquisition Act, hereinafter referred to as the Act, could not have been resorted to. The area of the petitioner's acquired land comes to 19 kanals 1 marla comprising khasra Nos. 14, 17/1, 17/2, 17/3, 18, 23, 24/1 and 26 in rectangle No. 37, situate in village Basalwa, tehsil Ballab-garh, district Gurgaon, which no doubt finds mention in the impugned notification. The respondents in their written statement have not denied the petitioner's allegation that he has built pucca residential house etc. on his land as shown in plan annexure "A". What they have maintained is that possession of the land would be acquired after announcing the award and as such the provision made in section 17 of the Act would not be availed of.

2. The Learned Counsel for the petitioner maintains that even the respondents' undertaking that possession of the acquired land in question would not be taken

till the award is given would not save the notification. I agree with him. He further submits that notification goes as a whole even the part which relates to section 6 of the Act. The notification runs as under:

Whereas the Governor of Haryana is satisfied that land specified below is needed by Government, at the public expense, for a public purpose, namely, for planned Development of Sector No. Seventeen in Ballabgarh-Faridabad Controlled Area, in Tehsil Ballabgarh, district Gurgaon, it is hereby declared that the land described in the specification below is required for the aforesaid purpose. "This declaration is made under the provisions of section 6 of the Land Acquisition Act I of 1894, to all whom it may concern and under the provisions of Section 7 of the said Act, the Land Acquisition Collector, Directorate of Urban Estates, Haryana, Chandigarh, is hereby directed to take order for the acquisition of the land. Plans of the land may be inspected in the offices of the Land Acquisition Collector, Directorate of Urban Estates, Haryana, Chandigarh and Estate Officer, Urban Estates Department of Town and Country Planning, Faridabad, district Gurgaon. In view of the urgency of acquisition, viz., relieving of acute and pressing demand for housing in Faridabad-Ballabgarh belt, due to large scale development industry in that area, the Governor of Haryana in exercise of the powers u/s 17 of the said Act, is further pleased to direct that the Land Acquisition Collector, Directorate of Urban Estates, Haryana, Chandigarh, shall proceed to take possession of the land herein specified in accordance therewith

It will be seen that the part relevant to section 6 of the Act is separate from the part relevant to section 17 of the Act and the two are not inter-mixed. It is not the petitioner's case that action u/s 6 could not have been taken re : his land. Keeping in view the rule laid down in Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others, and Sarju Prasad Saha v. State of U. P. 1966 A. L.J. 1 and others. I hold that the provisions made in section 17(1) of the Act could not have been utilized in the case because a minor part of the land owned by the petitioner as is evident from plan annexure "A" is built over. The notification is thus invalid so far as it invokes the powers u/s 17 (1) of the Act, hence the following para of it need to be struck down:

In view of the urgency of acquisition, viz., relieving of acute and pressing demand for housing in Faridabad, Ballabgarh belt, due to large scale development of industry in that area, the Governor of Haryana in exercise of the powers u/s 17 of the said Act is further pleased to direct that the Land Acquisition Collector, Directorate of Urban Estates, Haryana, Chandigarh, shall proceed to take possession of the land herein specified in accordance therewith.

3. For above reasons, the writ petition is allowed to the extent that part of the notification which relates to the exercise of powers u/s 17 of the Act by the Governor of Haryana which has been reproduced above is quashed. The remaining part of the impugned notification will, of course, stand. The learned Advocate-General agrees to it. The parties are left to bear their own costs.