

Jagdish Chand & Another

v.

State of Haryana & Another

SHIVARAJ V. PATIL AND B.N. SRIKRISHNA, JJ.,

(Supreme Court Of India)

C. A. No. 1145 of 2003 with No. 1147, 1148, 1144, 1400, 3426 of 2003, S. L. Ps, (C) No. 9927, 9664, 12084 of 2003, 9621, 9154, 9697 of 2004 | 22-07-2004

1. Delay condoned.

2. Leave granted in all the special leave petitions.

3. An area of about 299.25 acres of land was notified on 5-5-1997 for acquisition for residential, commercial and institutional purposes under S.4(1) of the Land Acquisition Act, 1894 (for short "the Act"). The appellants filed objections for the proposed acquisition in respect of their pieces of land, raising several contentions including the one that they have put up structures on their lands prior to the issuance of S.4(1) notification and actually they were living therein. When their objections were rejected and declaration was made under S.6 of the Act, they filed writ petitions in the High Court raising various grounds inter alia contending that in the case of certain lands, where the structures were put up, they were released from acquisition and the same yardstick was not applied in their cases. The High Court dismissed the writ petitions. Hence, they are in appeals before this Court.

4. At the outset, Shri L. Nageswara Rao, learned Senior Counsel for the appellants submitted that this Court in a similar situation pertaining to the acquisition of the land by the very authorities, pursuant to a different notification in *Sube Singh v. State of Haryana* (2001 (7) SCC 545) took the view that wherever the structures were there, they could be considered by the authorities for excluding from acquisition. He submitted that the appeals may be disposed of accordingly by giving directions as was done in the aforementioned case.

5. In opposition, the learned counsel for the respondents urged that the decision of this Court aforementioned cannot be applied to the facts of these cases; that was a case where the contentions raised by the appellants were accepted because there was no rationale for classifying the structures of different categories, namely, Classes 'A', 'B' and 'C'. The learned counsel for the appellants also made submissions justifying the acquisition. It may be mentioned here, the learned counsel for the appellants at the outset submitted that the appellants do not challenge the acquisition proceedings any more and they would be satisfied only if the structures put up by them are excluded from the acquisition. We asked the learned counsel for the respondents specifically as to what would be the difficulty in case the structures put up by the appellants prior to issuance of S.4(1) notification was excluded from the acquisition. He submitted that it may come in the way of planned development area.

6. This Court in a similar situation, though on a different ground, dealing with the structures of three different classes, found that there was no justification to exclude the structures of Class 'A' only and not to exclude structures of Classes 'B' and 'C' In that background, and on the facts of those cases, gave the directions as contained in Para.12 of the aforementioned case (2001 (7) SCC 545) which reads:

"12. In the result, the appeals are allowed. The judgments under challenge are set aside, the orders passed by the State Government rejecting the representation of the appellants are quashed. The Secretary, Urban Estates Department, State of Haryana, Respondent 1 herein, is directed to consider the objection petitions filed by the appellants for exclusion of their properties from acquisition and pass appropriate order excluding such lands having structures on them excepting any land which is required for construction of a road or hospital. Respondent 1 shall give opportunity of hearing to the appellants before taking the decision. The exercise shall be completed expeditiously if possible within three months. There will, however, be no order for costs."

7. In the counter affidavit filed before the High Court, the respondents have stated thus:

"2. That in reply to para 2 of the writ petition, it is submitted that the petitioners are the coowners in possession of the land falling in Khasra No. 1850 as per jamabandi for the year 1991-92. The petitioners had constructed two rooms and one kitchen of 'B' class standard.

3. That in reply to para 3 of the writ petition, it is submitted that the petitioners had constructed two rooms and one kitchen of 'B' class standard. Rest of the contents regarding extension of 'Lal Dora', etc., do not relate to the answering respondent."

8. In view of what is stated above, we do not find any good reason as to why directions as given in the case of Sube Singh (2001 (7) SCC 545) should not be given in these cases as well, subject to certain restrictions to take care of the planned development of the area. Accordingly, the impugned judgments are set aside and the appeals are allowed in the following terms:

1. The Secretary, Urban Estates Department, State of Haryana is directed to consider the objections of the appellants only so far it relates to exclusion of the land to the extent occupied by the structure and appropriate open area around the structure for the beneficial enjoyment of the appellants. However, this direction shall not come in the way of the authorities in removing the structures, if required for the purposes of road, hospital and other civic amenities.

2. The Secretary, Urban Estates Department shall decide not only the existence of the structures prior to S.4(1) notification or subsequent to, he shall also decide the extent of structure which existed prior to S.4(1) notification.

3. It is also open to the authorities to make adjustment or readjustment of plots for the purpose of planned development and in case it becomes necessary to give a little additional area from the plots to the appellants, the appellants shall be bound to take that additional area and also be bound to pay cost of such area as is chargeable to other allottees. The appellants shall also be bound to pay the developmental charges as is charged from other allottees. It is open to the parties to place documents or material in support of their contentions.

9. We expect that as far as possible, the respondents shall try to retain the structures, unless it becomes difficult for them to have a planned development without removing them in view of what is stated above.

10. The above directions will be applicable only to such of the cases where the residential structures are made prior to the issuance of S.4(1) notification and the appellants are actually residing there. However, in case of any dispute as to whether the structures were made prior to S.4(1) notification or later, the Secretary, Urban Estates Department shall determine that question after affording opportunities to both the parties, uninfluenced by observations made in the impugned orders of the High Court.

11. We make it clear that these directions are given on the peculiar facts of these cases and are not intended for any general application.

12. No costs.

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13. Having heard learned counsel for the parties, we do not find any good ground to interfere with the impugned order. The appeal is dismissed.

14. However, the dismissal of this appeal shall not come in the way of the appellants to make any representation to the competent authority to exclude the "samadhi" from acquisition, if desired. It is entirely for the authorities to deal with such representation.