

SUPREME COURT OF INDIA

Dharam Pal

Vs.

State of Haryana

C.A.No.7287 of 2008

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

15.12.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court dismissing the writ petition questioning legality of the Notification dated 24.8.2000 issued under Section 4 of the *Land Acquisition Act, 1894* (in short the `Act') as also the declaration under Section 6 of the Act dated 22.8.2001. The only ground which was pressed into service during arguments was that the construction made by the appellant has been acquired whereas similar kind of constructions made with regard to others similarly situated persons have been left out. The High Court did not find any substance in the plea and dismissed it.

3. During the course of hearing, learned counsel for the appellant placed strong reliance on the judgment of this Court in *Jagdish Chand & Anr. v. State of Haryana and Anr.*¹. This Court in *Jagdish Chand's* case (supra) relied on earlier judgment of this Court in *Sube Singh & Ors. v. State of Haryana and Ors.*².

4. Though, no one appeared for the respondent-State and its functionaries in spite of service of notice, a counter affidavit has been filed. In *Jagdish Chand's* case (supra) it was observed as follows:

“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 paragraph 12 of the aforementioned case¹ which reads: (SCC p. 549)

"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 as to costs."

5. In view of what has been stated in Jagdish Chand's case and Sube Singh's case (supra), we set aside the impugned judgment of the High Court and dispose of the appeal on the following terms:

“(1) The Secretary, Urban Estates Department, State of Haryana is directed to consider the objections of the appellant only so far as 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 appellant. 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 Section 4(1) notification or subsequent to, he shall also decide the extent of structure which existed prior to Section 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 appellant. The appellant shall be bound to take that additional area and also be bound to pay the cost of such area as is chargeable to other allottees. The appellant 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.”

6. 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.

7. The above directions will be applicable only to such of the cases where the residential structures are made prior to the issuance of Section 4(1) notification and the appellant is actually residing there. However, in case of any dispute as to whether the structures were made prior to Section 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.

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

9. The appeal is disposed of accordingly.

¹(2005 (10) SCC 162)

²(2001 (7) SCC 545)