

Vivek Coop House Building Society Limited

v.

State of Haryana & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE H.L.
GOKHALE

Civil Appeal No. 1274 Of 2013 (Arising From Slp(C) No. 16720 Of 2011) | 11-
02-2013

Leave granted.

The appellant is aggrieved by the negation of its challenge to the acquisition proceedings initiated by the State Government vide notification dated 31.3.2008 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act').

The appellant purchased two parcels of land total measuring 24 acres situated in Village Strod, Tehsil and District Hisar by registered sale deeds executed on 18.5.1984 and 13.6.1984. The mutations were sanctioned in favour of the appellant on 20.04.1985.

The lay-out plan submitted by the appellant was approved by Municipal Committee, Hisar vide resolution dated 22.12.1989. Deputy Commissioner, Hisar stayed the resolution of the Municipal Committee but his order was quashed by Sub-Judge, 1st Class, Hisar, who decreed the suit filed by the appellant.

In response to the notice issued under Section 4(1) of the Act, the appellant filed detailed objections under Section 5A(1) of the Act. The Land Acquisition Officer submitted report under Section 5A(2) of the Act without objectively considering the objections of the appellant. However, the State Government accepted the report and issued declaration under Section 6(1) of the Act.

The appellant challenged the acquisition proceedings in Writ Petition No.9718/2009 on the following grounds:

"32] That without considering the aforesaid objections under Section 5-A of the Land Acquisition Act, filed by the Petitioner Society, the Respondent issued the declaration under Section 6 of the Land Acquisition Act on 03.02.2009, vide Notification bearing No.LAC(H)-NTLA/2009/468, dated 3.2.2009. A copy of the declaration under Section 6 of the Land Acquisition Act, so issued is also annexed with the Writ Petition as Annexure P- 36.

33] That the acquisition of the land of the Petitioner Society and the construction thereof and development made thereupon is illegal, arbitrary, unconstitutional and irregular, in view of the Policy dated 30.09.2007, framed by the Respondent, wherein it is categorically provided that the State has framed the Policy not to acquire the land on which the construction is prior to the Notification under Section 4 of the Act. In the present case, the construction is much much prior to the Notification under Section 4 of the Act and the site plan of the Society has been passed by the Municipal Committee, Hisar; Roads have been carpeted. Electricity have been provided, Sewerage is in process by the Municipal Committee. The construction has been made and the plots have been allotted by the Society after keeping the land for all basic amenities. It is a developed Colony before the Notification under Section 4 of the Act. Therefore, in view of the Policy framed by the Respondent, the same shall have to be released from the acquisition. Inclusion of the area of the Petitioner Society in the Notification under Section 4 and 6 of the Land Acquisition Act, 1894 , is illegally, arbitrary, unconstitutional and irregular. A copy of the Policy dated 30.09.2007, framed by the Respondent State to this effect is also annexed with the Writ Petition as Annexure P-37.

34] That there is a discrimination between the two individuals standing on the same footing, while releasing the land of "ANAND NIKETAN", Opposite Sector 1 and 4 Raipur Road, Hisar as a T.P. Scheme for un-built area known as M/s Heaven Buildwel Pvt. Ltd. on Raipur Road, Opp. Sector 1 & 4 Part Hisar. This land was included in the Notification under Section 4 of the Land Acquisition Act, which was issued on 13.11.2002; under Section 6 on

10.11.2003 and the notices under Section 9 were issued on 02.11.2005, but the land was released on 17.06.2005.

A bare perusal of the aforesaid site plan would show Anand Niketan which is known as M/s Heaven Buildwel Pvt. Ltd. This land is closely associated with Anand Singh Dhangi and he plays a dominant role for getting this land released after the declaration under Section 6 of the Act.

The land with this Society was 31 Acres and the total land was released from the acquisition.

Apart from this, the other persons whose land has been left out by the Respondents are Balwant Singh and Jaswant Singh. Their land was measuring 10 acres, which has been left out. Both the lands which have been left out supra have been shown in the Site Plan in 'YELLOW COLOUR'.

The other land which is arising out of the same Notification under Section 4 and 6 of the Act is in the name of Sant Singh S/o Sh. Chanchal Singh, R/o H.No.34, Sector 14, Hisar. This land comprises in Khasra No.156//26/2 min and total land which is left out from acquisition is 23 Kanal. This land has been left out after the hearing of the Objections under Section 5A of the Act and before the declaration under Section 6 of the Act. The same is also shown in the site plan in 'YELLOW COLOUR'.

This land is a vacant land, but has been shown as a Banquet Hall.

Furthermore, a copy of the correspondence, vide which the land of M/s Heaven Buildwel Pvt. Ltd. has been released is annexed with the Writ Petition as Annexure P-38. Copies of the photographs showing vacant land, as well as showing that the construction is going on, are annexed with the Writ Petition as Annexure P-39.

All this shows that there is a naked eye discrimination between the two individuals standing on the same footing, while on the one hand releasing the land of one Society and on the other hand not releasing the land of the Petitioner Society, which was purchased long back; which was in existence long back.

35] That may be pointed out here that at the relevant time while releasing their land, the Senior Town Planner, HUDA has not recommended the same for release and has recommended declaration under Section 6 for 303.76 - 20.47 acres and the declaration was to be issued of the remaining land i.e. 283.29 acres, but subsequently, the same was released on 23.12.2009 by the Director Town and Country Planning, where it was written that the Notification be issued for 280.31 acres and thereafter, the Notification was issued after getting the approval from the Government.

But, this approval is also defective one. The total land acquired in the Notification under Section 4 is 303.76 acres and the total land declared to be acquired in the Notification under Section 6 is 280.31 Acres and the remaining area have been left out from the acquisition illegally, arbitrarily, irregularly. While releasing the remaining area, the Senior Town Planner, HUDA gave the report dated 20.11.08, which is reproduced hereinbelow for the kind perusal of this Hon'ble High Court:-

"DUE has sought recommendations of CA HUDA for issuance of section 6 Notification for above Sector, which is reserved for commercial use. The recommendations of JSIC are placed at F/C. However, since it is a commercial Sector and hence JSIC has not recommended release of any existing structures except for exclusion of land measuring 20.47 acres already acquired by HUDA with acquisition of other Sectors. Therefore, balance land measuring 303.76 - 20.47 = 283.29 acres may be notified under Section 6.

The location of above sector may be seen on copy of Dev. Plan placed at F/2 and copy of Sazra Plan at F/Z. The last date for Notification is 30.3.05.

Submitted for forwarding the recommendations xxx illegible."

Thereafter, the Director Town and Country Planning gave the report, which was got approved from C.M. and other Respondents. According to the report of the Senior Town Planner, 20.47 Acres land was left out from the acquisition and the declaration was to be issued for the remaining area. But according to the report of the Director Town and Country Planning, Notification is to be issued for 280.31 Acres, thereby releasing the land of Private Respondents without any rhyme and reasons and without application of mind unilaterally and with colourable exercise of power.

The above said information was got by the Petitioner under the Right to Information Act, 2005."

(reproduced from the SLP paper book)

The Division Bench of the High Court did not deal with any of the substantive grounds on which the appellant had questioned the acquisition proceedings and dismissed the writ petition simply by making reference to letter dated 29.11.2010 written by Additional Director, Urban Estates Department, Haryana, Panchkula to Advocate General, Haryana. This is evinced from the following extracts of the impugned order:

"So far as CWP No.9718 of 2009 is concerned, this has been filed by a Society, which owns about 22 Acres of land. It is not in dispute that there was a long drawn litigation between the petitioner and the district administration, which ultimately went in favour of the petitioner. Be that as it may, it is an admitted fact that at the spot, there are only 3 to 4 houses in existence. On September 20, 2010, taking note of the facts, alleged by the petitioner, following order was passed by this Court:

"We have gone through the site plan and other documents put on record and are convinced that the Society is going to construct houses in a planned manner. Some houses stood constructed in the area in question. Respondents have declined to release this area from acquisition only on the ground that the area is earmarked for commercial activities. Be that as it may, if colony, which is under litigation with the Administration for the last two decades, its land can be

adjusted, the petitioners have no objection to pay development charges or any other charges, as may be required.

The State counsel seeks time to get instructions as to whether the entire land of the Society or the constructed area can be left out from acquisition.

On request adjourned to 29.11.2010.

A copy of the order be given dasti to the State counsel under signature of Court Secretary of the Bench."

In response thereto, following communication was received from the office of Additional Director, Urban Estate Department, Haryana, Panchkula:

"From

Additional Director,

Urban Estates Department,

Haryana, Panchkula.

To

The Advocate General,

Chandigarh.

Memo No. 10152 dated 29.11.10.

Subject: CWP No. 9718 of 2010 - Vivek Co-operative House

Building Society Ltd.

The report in the above noted case was obtained from CA, HUDA and as per report the land of the society falls in sector 25 (commercial) which is being acquired for development of commercial sector and it will affect one five star hotel, one Guest House, one site for Museum/ Art Gallery/Library, 17 Shopping Booths, 9 Hotel Bays, 19 SCOs Parking green Belt, 24 mt & 30 mt. wide road etc. No residential activities can be undertaken in this area as per zoning regulations.

The detail report received from Chief Administrator, HUDA, Panchkula attached herewith. In view of the report, the land of the society may not be released."

It is an admitted fact that the land is going to be acquired to set up a commercial sector. Construction in 24 Acres of land, owned by the Society, is very less. As is apparent from the communication now received, if land of the petitioner is kept out of acquisition, it will create hurdle in development of the commercial area in Sector 25, Hisar.

So far as contention of Mr. Sharma that development of infrastructure etc. already stood executed and the Society had deposited a huge amount with the Municipal Committee towards development charges, the Society may take up the matter for refund of that amount or the Land Acquisition Collector may take care of the same while passing an award. At this stage, it is not possible for us to interfere at the instance of the petitioners. No further argument was raised. Dismissed."

We have heard Shri P.S.Patwalia, learned senior counsel for the appellant and Shri Narender Hooda, learned senior Additional Advocate General. In our view, the impugned order is liable to be set aside because the High Court did not

consider the appellant's plea that the acquisition proceedings were vitiated by arbitrariness, gross discrimination and violation of the Government's own policy. The letter written by Additional Director, Urban Estates to the Advocate General, Haryana that the land of the appellant is required for Commercial Sector could not be made the sole basis for non-suiting the appellant which, as mentioned above, had purchased land almost 24 years prior to initiation of the acquisition proceedings and deposited Rs.28 lacs towards development charges. The High Court's failure to consider the grounds on which the appellant had challenged the acquisition proceedings has resulted in manifest injustice.

For the reason stated above, the appeal is allowed, the impugned order is set aside and the matter is remitted to the High Court for fresh disposal of the writ petition in accordance with law. Interim order dated 15.07.2011 passed by this Court shall remain operative till the disposal of the writ petition by the High Court.