

SUPREME COURT OF INDIA

Gurbinder Kaur Brar

Vs.

Union of India

C.A.No.5885 of 2013

(G.S.Singhvi and V.Gopala Gowda JJ.)

22.07.2013

JUDGMENT

G.S. SINGHVI, J.

1. Leave granted.

2. These appeals are directed against order dated 18.3.2011 passed by the Division Bench of the Punjab and Haryana High Court whereby the writ petitions filed by the appellants for quashing the acquisition of their land were dismissed along with a batch of other petitions.

3. At the outset, we may mention that the impugned order was set aside by this Court in Surinder Singh Brar and others v. Union of India and others (2013) 1 SCC 403 and Notifications dated 26.6.2006, 2.8.2006 and 28.2.2007 issued by the Chandigarh Administration under Sections 4(1) and 6(1) of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') for the acquisition of land for Phase-III of Chandigarh Technology Park were quashed.

4. By Notification dated 1.10.2002 issued under Section 4(1) of the 1894 Act, the Chandigarh Administration proposed the acquisition of 71.96 acres land for various purposes including the Chandigarh Technology Park. The appellants filed detailed objections under Section 5A(1) because their land were also included in Notification dated 1.10.2002. After making a show of hearing the objectors, the Land Acquisition Officer, Union Territory, Chandigarh submitted report with the recommendation that the land notified on 1.10.2002 may be acquired. The report of the Land Acquisition Officer was accepted by the officers of the Chandigarh

Administration and declaration dated 29.9.2003 was issued under Section 6(1) of the 1894 Act for 56.76 acres land.

5. The appellants challenged the acquisition of their land in Civil Writ Petition No.8545/2004 titled Gurbinder Kaur Brar and another v. Union of India and others and Civil Writ Petition No.12779/2004 titled Milkha Singh v. Union of India and others.

6. Similar petitions were filed by other landowners whose land had been acquired for Phases-II and III of Chandigarh Technology Park. All the writ petitions were dismissed by the Division Bench of the High Court by the impugned order.

7. In Surinder Singh Brar and others v. Union of India and others (supra), this Court reversed the order of the High Court and quashed the acquisition of land for Phase-III of Chandigarh Technology Park and various other purposes specified in Notifications dated 26.6.2006, 2.8.2006 and 28.2.2007. While dealing with the question whether the officers of the Union Territory of Chandigarh other than the Administrator could issue notifications under Sections 4(1) and 6(1) of the 1894 Act, this Court referred to Article 239 of the Constitution (unamended and amended), Notifications dated 8.10.1968, 1.1.1970 and 14.8.1989 issued under Clause (1) of that Article, Notification dated 25.2.1988 issued by the Administrator, Union Territory of Chandigarh under Section 3(1) of the Chandigarh (Delegation of Powers) Act, 1987 (for short, 'the 1987 Act') and observed:

“The unamended Article 239 envisaged administration of the States specified in Part C of the First Schedule of the Constitution by the President through a Chief Commissioner or a Lieutenant Governor to be appointed by him or through the Government of a neighbouring State. This was subject to other provisions of Part VIII of the Constitution. As against this, amended Article 239 lays down that subject to any law enacted by Parliament every Union Territory shall be administered by the President acting through an Administrator appointed by him with such designation as he may specify. In terms of clause (2) of Article 239 (amended), the President can appoint the Governor of a State as an Administrator of an adjoining Union territory and on his appointment, the Governor is required to exercise his function as an Administrator independently of his Council of Ministers. The difference in the language of the unamended and amended Article 239 makes it clear that prior to 1-11-1956, the President could administer Part C State through a Chief Commissioner or a Lieutenant Governor, but, after the amendment,

every Union Territory is required to be administered by the President through an Administrator appointed by him with such designation as he may specify. In terms of clause (2) of Article 239 (amended), the President is empowered to appoint the Governor of State as the Administrator to an adjoining Union Territory and once appointed, the Governor, in his capacity as Administrator, has to act independently of the Council of Ministers of the State of which he is the Governor.

A reading of the Notification issued on 1-11-1966 (set out in para 42) shows that in exercise of the power vested in him under Article 239(1), the President directed that the Administrator shall exercise the power and discharge the functions of the State Government under the laws which were in force immediately before formation of the Union Territory of Chandigarh. This was subject to the President's own control and until further orders. By another notification issued on the same day, the President directed that all orders and other instruments made and executed in the name of the Chief Commissioner of Union Territory of Chandigarh shall be authenticated by the signatures of the specified officers. These notifications clearly brought out the distinction between the position of the Administrator and the Chief Commissioner insofar as the Union Territory of Chandigarh was concerned. Subsequently, the President appointed the Governor of Punjab as Administrator of the Union Territory of Chandigarh and separate notifications were issued for appointment of Adviser to the Administrator. The officers appointed as Adviser are invariably members of the Indian Administrative Service.

After about 2 years of the issuance of the first notification under Article 239(1) of the Constitution, by which the powers and functions exercisable by the State Government under various laws were generally entrusted to the Administrator, Notification dated 8-10-1968 (set out in para 44) was issued and the earlier notification was modified insofar as it related to the exercise of powers and functions by the Administrator under the Act and the President directed that subject to his control and until further orders, the powers and functions of "the appropriate Government" shall also be exercised and discharged by the Administrator. The Notification dated 8-10-1968 was superseded by the Notification dated 1-1-1970 (set out in para 45) and the President directed that subject to his control and until further orders, the powers and functions of "the appropriate Government" shall also be exercised and discharged by the Administrator of every Union territory whether known as the Administrator, the Chief Commissioner or the

Lieutenant Governor. The last Notification in the series was issued on 14-8-1989 (set out in para 46) superseding all previous notifications. The language of that notification is identical to the language of the Notification dated 1-1-1970.

There is marked distinction in the language of the notifications issued under Article 239(1) of the Constitution. By the Notification dated 1-11-1966 (set out in para 42), the President generally delegated the powers and functions of the State Government under various laws in force immediately before 1-11-1966 to the Administrator. By all other notifications, the power exercisable by “the appropriate Government” under the Act and the Land Acquisition (Companies) Rules, 1963 were delegated to the Administrator. It is not too difficult to fathom the reasons for this departure from Notification dated 1-11-1966. The Council of Ministers whose advice constitutes the foundation of the decision taken by the President was very much conscious of the fact that compulsory acquisition of land, though sanctioned by the provisions of the Act not only impacts lives and livelihood of the farmers and other small landholders, but also adversely affects the agriculture, environment and ecology of the area. Therefore, with a view to avoid any possibility of misuse of power by the executive authorities, it has been repeatedly ordained that powers and functions vested in “the appropriate Government” under the Act and the 1963 Rules shall be exercised only by the Administrator. The use of the expression “shall also be exercised and discharged” in the Notifications dated 8-10-1968, 1-1-1970 and 14-8-1989 is a clear pointer in this direction. The seriousness with which the Central Government has viewed such type of acquisition is also reflected from the decision taken by the Home Minister on 23-9-2010 (set out in para 35) in the context of the report of the Special Auditor and the one-man committee. Thus, the acquisition of land for and on behalf of the Union Territories must be sanctioned by the Administrator of the particular Union territory and no other officer is competent to exercise the power vested in “the appropriate Government” under the Act and the Rules framed thereunder.

We may now advert to the Notification dated 25-2-1988 (set out in para 47) issued under Section 3(1) of the 1987 Act, vide which the Administrator directed that any power, authority or jurisdiction or any duty which he could exercise or discharge by or under the provisions of any law, rules or regulations as applicable to the Union Territory of Chandigarh shall be exercised or discharged by the Adviser except in cases or class of cases enumerated in the Schedule. There is nothing in the language of Section 3(1)

of the 1987 Act from which it can be inferred that the Administrator can delegate the power exercisable by “the appropriate Government” under the Act which was specifically entrusted to him by the President under Article 239(1) of the Constitution. Therefore, the Notification dated 25- 2-1988 cannot be relied upon for contending that the Administrator had delegated the power of “the appropriate Government” to the Adviser.”

The Court then considered the question whether the reports submitted by the Land Acquisition Officer under Section 5A(2) were vitiated due to non-consideration of the objections filed by the landowners and answered the same in affirmative by recording the following observations:

“A cursory reading of the reports of the LAO may give an impression that he had applied mind to the objections filed under Section 5A(1) and assigned reasons for not entertaining the same, but a careful analysis thereof leaves no doubt that the officer concerned had not at all applied mind to the objections of the landowners and merely created a facade of doing so. In the opening paragraph under the heading “Observations”, the LAO recorded that he had seen the revenue records and conducted spot inspection. He then reproduced the Statement of Objects and Reasons contained in the Bill which led to the enactment of the Punjab New Capital (Periphery) Control Act, 1952 and proceed to extract some portion of reply dated 31.7.2006 sent by the Administrator to Surinder Singh Brar.

In the context of the statement contained in the first line of the paragraph titled “Observations”, we repeatedly asked Shri Sudhir Walia, learned counsel assisting Dr. Rajiv Dhawan to show as to when the LAO had summoned the revenue records and when he had conducted spot inspection but the learned counsel could not produce any document to substantiate the statement contained in the two reports of the LAO. This leads to an inference that, in both the reports, the LAO had made a misleading and false statement about his having seen the revenue records and conducted spot inspection. That apart, the reports do not contain any iota of consideration of the objections filed by the landowners. Mere reproduction of the substance of the objections cannot be equated with objective consideration thereof in the light of the submission made by the objectors during the course of hearing. Thus, the violation of the mandate of Section 5A(2) is writ large on the face of the reports prepared by the LAO.

The reason why the LAO did not apply his mind to the objections filed by the appellants and other landowners is obvious. He was a minion in the hierarchy of the administration of the Union Territory of Chandigarh and could not have even thought of making recommendations contrary to what was contained in the letter sent by the Administrator to Surinder Singh Brar. If he had shown the courage of acting independently and made recommendation against the acquisition of land, he would have surely been shifted from that post and his career would have been jeopardized. In the system of governance which we have today, junior officers in the administration cannot even think of, what to say of, acting against the wishes/dictates of their superiors. One who violates this unwritten code of conduct does so at his own peril and is described as a foolhardy. Even those constituting higher strata of services follow the path of least resistance and find it most convenient to tow the line of their superiors. Therefore, the LAO cannot be blamed for having acted as an obedient subordinate of the superior authorities, including the Administrator. However, that cannot be a legitimate ground to approve the reports prepared by him without even a semblance of consideration of the objections filed by the appellants and other landowners and we have no hesitation to hold that the LAO failed to discharge the statutory duty cast upon him to prepare a report after objectively considering the objections filed under Section 5A(1) and submissions made by the objectors during the course of personal hearing.”

The Court also analysed the provisions of Sections 4(1), 5A, 6(1) of the 1894 Act, referred to several judgments and observed:

“What needs to be emphasised is that hearing required to be given under Section 5-A(2) to a person who is sought to be deprived of his land and who has filed objections under Section 5-A(1) must be effective and not an empty formality. The Collector who is enjoined with the task of hearing the objectors has the freedom of making further enquiry as he may think necessary. In either eventuality, he has to make report in respect of the land notified under Section 4(1) or make different reports in respect of different parcels of such land to the appropriate Government containing his recommendations on the objections and submit the same to the appropriate Government along with the record of proceedings held by him for the latter’s decision. The appropriate Government is obliged to consider the report, if any, made under Section 5-A(2) and then record its satisfaction that the particular land is needed for a public purpose. This exercise culminates into making a declaration that the land is needed for a public purpose and the

declaration is to be signed by a Secretary to the Government or some other officer duly authorised to certify its orders. The formation of opinion on the issue of need of land for a public purpose and suitability thereof is sine qua non for issue of a declaration under Section 6(1). Any violation of the substantive right of the landowners and/or other interested persons to file objections or denial of opportunity of personal hearing to the objector(s) vitiates the recommendations made by the Collector and the decision taken by the appropriate Government on such recommendations. The recommendations made by the Collector without duly considering the objections filed under Section 5- A(1) and submissions made at the hearing given under Section 5- A(2) or failure of the appropriate Government to take objective decision on such objections in the light of the recommendations made by the Collector will denude the decision of the appropriate Government of statutory finality. To put it differently, the satisfaction recorded by the appropriate Government that the particular land is needed for a public purpose and the declaration made under Section 6(1) will be devoid of legal sanctity if statutorily engrafted procedural safeguards are not adhered to by the authorities concerned or there is violation of the principles of natural justice. The cases before us are illustrative of flagrant violation of the mandate of Sections 5-A(2) and 6(1).”

8. Shri Sudhir Walia, learned counsel for the Chandigarh Administration made valiant effort to convince us that the view taken in *Surinder Singh Brar and others v. Union of India and others*(supra) on the interpretation of the provisions of the 1987 Act needs reconsideration but we do not find any valid ground to accept the submission of the learned counsel. In our view, Section 3(1) of the 1987 Act does not empower the Administrator to delegate the functions of the “appropriate government” to any officer or authority specified in the notification issued under that section because the Presidential notification does not provide for such delegation.

9. We also agree with the learned counsel for the appellants that the report of the Land Acquisition Officer was vitiated due to total non- application of mind by the concerned officer to large number of substantive objections raised by the appellants under Section 5A(1). He mechanically rejected the objections and senior officers of the Chandigarh Administration accepted the report of the Land Acquisition Officer despite the fact that the same had been prepared in violation of Section 5A(2).

10. Shri Walia made a last ditched effort to save Notification dated 1.10.2002 and for this purpose he relied upon order dated 27.2.2013 passed by the coordinate Bench in Civil Appeal No. 1964/2013 titled Lajja Ram and others v. Union Territory, Chandigarh and others. We have carefully gone through that order and are of the view that Notification dated 1.10.2002 cannot be saved at this belated stage and the Competent Authority cannot issue declaration under Section 6(1) of the Act after 11 years of the issue of notification under Section 4(1). We may add that in view of the law laid down by the Constitution Bench in Padma Sundara Rao v. State of Tamil Nadu (2002) 3 SCC 533, which was followed in a large number of judgments, the Chandigarh Administration cannot now issue a declaration under Section 6(1) after rectifying the illegalities committed in the preparation of report under Section 5A(2) and issue of the earlier declaration.

11. In the result, the appeals are allowed, the impugned order is set aside and Notifications dated 1.10.2002 and 29.9.2003 are quashed insofar as the same relate to the lands of the appellants. The parties are left to bear their own costs.