

SUPREME COURT OF INDIA

Vinod Kumar

Vs.

State of Haryana

C.A.Nos.973-974 of 2014

(Sudhansu Jyoti Mukhopadhyaya and V.Gopala Gowda JJ.)

28.01.2014

JUDGMENT

V. GOPALA GOWDA, J.

1. Delay condoned. Leave granted.

2. These appeals are filed by the appellant questioning the correctness of the judgment and final Order dated 05.04.2011 passed in C.W.P. No. 7746 of 2009 and order dated 16.12.2011 passed in Review Application No. 388 of 2011 by the High Court of Punjab and Haryana at Chandigarh, urging various facts and legal contentions in justification of his claim.

3. Necessary relevant facts are stated hereunder to appreciate the case of the appellant and also to find out whether the appellant is entitled for the relief as prayed in this appeal.

The appellant is the owner of 5 Kanals 6 Marlas of land out of which 934 square yards have been left out of acquisition. On 07.02.2008, under the Haryana Urban Development Authority Act, 1977, the Haryana Urban Development Authority issued a notice for acquisition of land including that of the appellant for public purpose namely, for the development and utilization of the land as residential and commercial purposes. The notification was issued under Section 4 of the Land Acquisition Act, 1894 (in short 'the Act') and the Land Acquisition Collector, Urban Estate, Faridabad, Haryana was authorized to issue public notice on the substance of

notification at convenient places in the locality. He was also authorized to survey upon the land and take necessary action regarding the same. The appellant filed a detailed objection under Section 5A of the Act categorically stating that the appellant has raised an A Class construction on the concerned area in the year 1999-2000 and therefore, inclusion of the land for the purpose of acquisition is not justified. In the meanwhile, on 10.03.2008, the said land was released by the Authority in favour of Ritwiz Builders and Developers Pvt. Ltd. However, on 15.09.2008, the Land Acquisition Collector considered the objection filed by the appellant under Section 5A of the Act and as per his report, exempted the land of the appellant from acquisition since there was already a residential building on the land on the date of the notification. In spite of the report produced by the Land Acquisition Collector, the Haryana Urban Development Authority vide notification dated 06.02.2009 made a declaration that the appellant's land is to be acquired for the development of residential and commercial Sector Nos. 76,77 and 78 for which the notification was initially issued on 07.02.2008.

4. It is the case of the appellant that while issuing the notification under Section 6 of the Act, the property adjoining to the land of the appellant, which belongs to one M/s. Harpreet Food, was released. Though the respondent Authority has released a portion of the appellant's property, some part of the built-up and constructed portion of the house was not released.

5. The appellant therefore, filed a writ petition before the High Court of Punjab and Haryana registered as Writ Petition No. 7746 of 2009, challenging the acquisition of his land by the Authority. The said petition got tagged along with other similar petitions filed by different affected parties and the Writ Petition No. 7711 of 2009, titled New Vidya Niketan Educational Society Vs. State of Haryana & Ors. was made the lead case.

6. The High Court, after hearing both the parties concluded that in all the writ petitions, construction was raised in an unauthorized manner without getting any permission either under the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 or under the relevant Municipal laws. Even then in some cases, relief was granted by releasing some portion of the land under construction and ordering acquisition of vacant land. The action taken by the Authority was held perfectly justified. The Review

Application No. 388 of 2011 filed by the appellant against dismissal of his C.W.P. No. 7746 of 2009 was also dismissed on 16.12.2011. Hence, these appeals.

7. The learned senior counsel Mr. Pallav Sisodia, appearing on behalf of the appellant argued that the High Court failed to appreciate that there was a construction already made by the appellant for residential purpose. Therefore, as per the policy of the Government of Haryana, the constructed portion including the amenities and other built up areas are required to be released from the process of acquisition. It is the further case of the appellant that the High Court erred in not appreciating the fact that the Land Acquisition Collector in his report has mentioned that the land of the appellant may not be acquired since it has a well-laiden beautiful residence. The State Government, as per the learned senior counsel, illegally and in an unauthorized manner, has acquired the land. It is also the case of the appellant that in a different case having similar facts, the High Court has passed an Order releasing the lands over which built up houses were situated. The learned senior counsel of the appellant further argues that the Government has adopted the 'pick and choose' methodology for acquiring land thereby exempting the commercial establishments from acquisition and discriminating against the appellant.

8. The learned Additional Advocate General Mr. Manjit Singh, appearing on behalf of the State contended that the appellant had illegally raised construction on this land without permission of the concerned authority. Hence, the appellant cannot now seek exemption from acquisition on the ground that there is a residential construction on the land and therefore, the land cannot be acquired.

9. We are inclined to observe that the High Court has erred in dismissing the writ petition of the appellant as the same is contrary to the principle laid down by this Court in the following cases :-

In *Kamal Trading (P) Ltd. v. State of West Bengal*[1], it has been held as under:-

“14. It must be borne in mind that the proceedings under the LA Act are based on the principle of eminent domain and Section 5- A is the only protection available to a person whose lands are sought to be acquired. It is a minimal safeguard afforded to him by law to protect himself from arbitrary acquisition by pointing out to the authority concerned, inter alia, that the important ingredient, namely, "public purpose" is absent in the proposed

acquisition or the acquisition is mala fide. The LA Act being an expropriatory legislation, its provisions will have to be strictly construed.

15. Hearing contemplated under Section 5-A(2) is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition and make a report. The report of the Collector referred to in this provision is not an empty formality because it is required to be placed before the appropriate Government together with the Collector's recommendations and the record of the case. It is only upon receipt of the said report that the Government can take a final decision on the objections. It is pertinent to note that declaration under Section 6 has to be made only after the appropriate Government is satisfied on the consideration of the report, if any, made by the Collector under Section 5-A(2). As said by this Court in Hindustan Petroleum Corpn. Ltd., the appropriate Government while issuing declaration under Section 6 of the LA Act is required to apply its mind not only to the objections filed by the owner of the land in question, but also to the report which is submitted by the Collector upon making such further inquiry thereon as he thinks necessary and also the recommendations made by him in that behalf.

16. Sub-section (3) of Section 6 of the LA Act makes a declaration under Section 6 conclusive evidence that the land is needed for a public purpose. Formation of opinion by the appropriate Government as regards the public purpose must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. It is, therefore, that the hearing contemplated under Section 5-A and the report made by the Land Acquisition Officer and his recommendations assume importance. It is implicit in this provision that before making declaration under Section 6 of the LA Act, the State Government must have the benefit of a report containing recommendations of the Collector submitted under Section 5A(2) of the LA Act. The recommendations must indicate objective application of mind.”

(Emphasis laid by this Court)

In the case of Usha Stud and Agricultural Farms Pvt. Ltd. v. State of Haryana[2], it was held as under:

“30.....Section 6(1) provides that if the appropriate Government is satisfied, after considering the report, if any, made by the Collector under Section 5-A(2) that particular land is needed for the specified public purpose then a declaration should be made. This necessarily implies that the State Government is required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6(1).”

(Emphasis laid by this Court)

Further, in the case of Women’s Education Trust and Anr. v. State of Haryana & Ors.[3], this Court has held as under:-

“20. What is most surprising is that the High Court did not even deal with the issue relating to application of mind by the Government to the report submitted by the Land Acquisition Collector under Section 5A(2) along with his recommendations. The documents produced before the High Court and this Court do not show that the State Government had objectively applied mind to the recommendations made by the Land Acquisition Collector and felt satisfied that the land in question deserves to be acquired for the purpose specified in the notification issued under Section 4(1). The record also does not contain any indication as to why the State Government did not consider it proper to accept the recommendations of the Land Acquisition Collector. Therefore, there is no escape from the conclusion that the impugned acquisition is ultra vires the provisions contained in Section 6 of the Act.”

(Emphasis laid by this Court)

Also, in an earlier case in Shyam Nandan Prasad & Ors. v. State of Bihar & Ors.[4], this Court observed that compliance of Section 5A of the Act is a sine qua non for acquisition of land. This Court held that:

“10.....The decision of the Collector is supposedly final unless the appropriate Government chooses to interfere therein and cause affectation, suo motu or on the application of any person interested in the land. These requirements obviously lead to the positive conclusion that the proceeding before the Collector is a blend of public and individual enquiry. The person interested, or known to be interested, in the land is to be served personally of the notification, giving him the opportunity of objecting to the acquisition

hereby quashed. The impugned judgment and orders of the High Court are set aside. The appeals are allowed. No costs.

[1] (2012) 2 SCC 25

[2] (2013) 4 SCC 210

[3] (2013) 8 SCC 99

[4] (1993) 4 SCC 255