

SUPREME COURT OF INDIA

Sita Ram

Vs.

State of Haryana

C.A.No.10532 of 2014

(V.Gopala Gowda and Adarsh Kumar Goel JJ.)

25.11.2014

JUDGMENT

V.GOPALA GOWDA, J.

1. Leave granted.
2. This appeal is directed against the final judgment and order dated 05.07.2011 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 9710 of 2003 dismissing the Writ Petition.

The facts of the case are briefly stated hereunder:-

3. The appellant started his factory for manufacturing fireworks in the year 1990 at Village Kasar, Tehsil Bahadurgarh, District Jhajjar and was granted a licence by the Chief Controller of Explosives for storage of explosives under the Explosives Rules, 1983 framed under the Explosives Act, 1884.
4. Under the Explosives Rules, it is mandatory to maintain open radial safety distance of 71 meters from all sides around the magazine storing 2 Lakh Kgs. of fireworks. The letter dated 05.03.2001 was issued to the appellant's firm by the Joint Chief Controller of Explosives, Faridabad, stipulating that 71 meters of safety radial distance must be maintained from all sides of the magazine storing 2 Lakh kgs of fireworks. The

explosive rules further mandate that land of 71 meter radius around the magazine should also be free from construction for the continuance of the explosive license.

5. As per document Annexure P-9-H dated 28.05.1990, it appears that the permission was granted to store the explosives only to the extent of 1,700kgs. So far as the requirement for keeping 71 meters of mandatory safety distance, it is applicable only in cases where permission has been granted to store explosive to the extent of 2 lakh kgs. This fact is evident from the document P-9-Q.

6. A letter dated 05.03.2001 was issued by the Department of Explosives. Initially, the appellant got permission for manufacture of fireworks of 1700 kgs. but later on the Department of Explosives granted licence to the appellant's firm for storing 2 lakh kgs of fireworks in the magazine situated at the appellant's land. The said letter dated 5.03.2001 is written to M/s Gupta and Co. and it states thus:-

"Adverting to your letter dated 2.3.2001, it is clarified that minimum land required for a firework factory having 6 processing sheds may be computed as follows as required under the Explosive Rules, 1983. The magazine accommodating 2,00,000 kgs of fireworks should observe radial safety distance of 71 mts. from all sides."

7. Vide letter dated 27.10.1999, the Department of Explosives, Government of India, granted amended permission for possession and sale of fireworks to the extent of 2 lakh kgs at magazine situated at village Kasar, District Rohtak, Haryana which reads as under :-

"Licence No.E.25(11) 51 dated 31.03.1992 is hereby amended for possession and sale of fireworks (Class 7, Divn. 2 sub-divn. 1 &2) - 2,00,000 kgs. from your magazine at village Kasar, Distt Rohtak (Haryana)."

But as stated above, the land in question is necessarily required as per the mandate of Explosive Rules.

8. On 24.01.2001 the Government of Haryana issued Notification under Section 4 of the Land Acquisition Act, 1984 (hereinafter referred to as "the Act") for acquisition of land of villages Kassar, Sankhol, Jhakhodha and Saidpur, Tehsil-Bahadurgarh,

District-Jhajjar including land measuring 71 Kanals owned by the appellant for the purpose of development of area.

9. Objections filed under Section 5-A of the Act for release of the appellant's land was considered and found to have merit and part of the appellant's land was released from acquisition. Following the same, the notification was issued under Section 6 of the Act, under which the remaining part of the appellant's land that was not released from acquisition was acquired whereas land belonging to other industries such as M/s. Rockwell Industries Pvt. Ltd., M/s H.B. Plastics Pvt. Ltd., M/s Rocklight Chemicals and Resins Pvt. Ltd., M/s Prag Auto Products Ltd. were released from acquisition and these industries were even given permission for change of land use. It is argued that the respondents thus had adopted a pick and choose policy, which is a clear case of discrimination, violative of Article 14 of the Constitution & also amounts to unreasonable and arbitrary action by them.

10. Being aggrieved by the same, the appellant filed Civil Writ Petition No. 9710 of 2003 before the High Court of Punjab and Haryana at Chandigarh. The High Court was pleased to grant interim restraint order against the respondents in favour of appellant in regard to possession of the land in question and passed order dated 03.07.2003 in CWP No. 9710 of 2003 in terms of order dated 25.11.2002 passed in a connected CWP No. 13557 of 2002.

11. During the pendency of the said writ petition, the State Government framed a comprehensive policy dated 26.10.2007 for releasing land from acquisition proceedings and placed reliance upon certain relevant following clauses:

"1. No request will be considered after one year of award. Only those requests will be considered by the Government where objections under Section 5-A were filed.

2. XXX XXX XXX XXX

3. Any factory or commercial establishment which existed prior to Section 4 will be considered for release.

4-5. XXX XXX XXX XXX

6. That the Government may also consider release any land in the interest of integrated and planned development for where the owner have approached the Hon'ble Courts and have obtained by stay against dispossession.

Provided that the Government may release any land on the grounds other than stated above under Section 48 (1) of the Act under exceptionally justifiable circumstance for the reasons to be recorded in writing."

Under this policy, land having construction prior to issuance of notification under Section 4 of the Act were not included in the acquisition. The factory and commercial establishments which existed prior to issuance of notification under Section 4 of the Act were also to be released from acquisition. The constructed area of 'A' and 'B' grade should be left out from acquisition. Further, in cases where the owners of land approached the Courts and got stay order against their dispossession were also to be considered for release from acquisition.

12. This Court considered the said policy in the case of Sube Singh & Ors v. State of Haryana & Ors.[1] and granted 'Stay of dispossession' in similar matter involving the same policies issued by the State of Haryana for releasing the land, in SLP (c) No.15645 of 2008, Kishan Das & Ors. v. State of Haryana & Ors. vide order dated 18.07.2008. Further, this Court by its order dated 05.01.2011, granted 'Leave' in the same matter along with batch of other matters, wherein also the same policy of the State of Haryana is involved for releasing such land covered under the policy from acquisition.

13. The High Court after examining the facts, evidence produced on record and circumstances of the case observed that the permission was granted to the appellant to set up a fire cracker factory and as per Annexure P-9-H dated 28.05.1990, the said permission was granted to store the explosives only to the extent of 1700 kgs. On the statutory requirement of keeping 71 meters of mandatory safety distance, the High Court held that it was applicable only in cases where permission was granted to store explosives to the extent of 2,00,000 kgs. which was evident from Annexure P-9-Q. It was further held that the documents put on record indicate that in the year 1991, permission was granted in favour of the appellant to set up a fire cracker factory as per document P-9-H dated 28.05.1990 and that there was nothing on record at any time

that permission was granted to the appellant by the Joint Chief Controller of Explosives, North Circle, Faridabad to store 2,00,000 kgs. of explosives was either cancelled or modified. From the perusal of the photographs produced that the industrial unit was not in working condition, there was wild growth of grass, and the doors and window panes of the building were also found to be missing is the contention urged by the respondents. The High Court held that there was no visible activity in sight so far as the premises is concerned in the photographs and that after getting the license; the so-called industrial unit was not in operation. Therefore, the objections raised by the appellant under Section 5A of the Act to the preliminary notification are not tenable in law and the High Court held that no legal flaw has been shown to the Court by the appellant that acquisition proceedings are bad in law. Therefore, the High Court opined that there is nothing to interfere with the acquisition proceedings at the instance of the appellant and dismissed the petition.

14. The correctness of the said impugned judgment and order of the High Court is challenged by the appellant by filing this Civil Appeal urging various legal contentions. Brief and relevant facts are stated for the limited purpose in this case as we have examined the application filed by the appellant under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act of 2013').

15. This Court vide order dated 19.03.2012 issued notice and dasti in addition to the ordinary process and directed to maintain "status quo" with regard to the subject property. The said interim order is still in force.

16. The learned counsel for the appellant placed reliance upon the decision of this Court in the case of Sube Singh (supra) stating certain relevant facts relating to the land acquisition of the appellant and referring to the affidavit of Shri T.L. Satyaprakash, Special Secretary to Government of Haryana and Director, Industries and Commerce, Haryana Chandigarh dated 19.04.2011 filed in CWP No. 7218 of 2002 before the High Court in compliance of its order dated 24.01.2011, where the status of land of various writ petitions pending before the High Court was given including the appellant's land which reads thus:

"That it is further respectfully submitted that the State Government issued another notification dated 24.01.2001 under Section 4 of the Land Acquisition

Act, 1894 for acquisition of land measuring 616 acres 1 kanal 9 marlas, for a public purpose, namely, for development of industrial area in villages Baadurgah, Kasr Sankhol, Jhakhoda and Saadpur, Tehsil Bahadurgarh, District Jhajjar. As per the provisions of the Act, the said notification was published in the official Gazette dated 24.01.2001 of the State Government and in two daily newspapers, namely "Hari Bhoomi" dated 11.02.2001 and "Financial Express" dated 10.02.2001. The State Government issued notification dated 19.07.2001 under Section 48 of the Act for land measuring 1 acres 7 kanals 17 marlas of village Sankhol. Subsequently, another notification dated 09.01.2002 was issued under Section 48 of the Act for land measuring 6 acres 1 kanal 15 marlas of village Sankhol.

Subsequently, the State Government after considering the recommendations of the LAC, Jhajjar and the comments of the HSIIDC, issued notification dated 22.01.2002 under Section 6 of the Act for acquisition of land measuring 576 acres 5 kanals 12 marlas of villages Bahadurgarh, Kassar, Sankhol, Jhakhoda and Saadpur, tehsil Bahadurgarh, district Jhajjar. As per the provisions of the Act, the said notification was published in the official Gazette dated 22.01.2002 of the State Government and in two daily newspapers, namely, "Hari Bhoomi" dated 31.01.2002 and "The Pioneer" dated 03.02.2002. The LAC, Jhajjar, announced the Award of the land comprising in villages Bahadurgarh, Kassar, and Saadpur on 08.10.2003 and of villages Saadpur Sankhol and Jhakhoda on 23.12.2003, thus completing the acquisition proceedings."

The learned counsel for the appellant has also placed strong reliance upon the additional affidavit filed by T.L. Satyaprakash, Special Secretary to Government, Haryana, wherein he has stated at paragraph 8, the relevant portion of which reads thus:

"...That the total amount of the entire acquired land measuring 272 acres 3 kanals 15 marlas comes to Rs.9125156/- It is further submitted that there were 794 claimants in all out of whom 748 persons have already received their compensation to the tune of Rs. 88177626/-. The balance amount of compensation belongs to the remaining 46 persons including the petitioner amount to Rs.3027530/- out of which the petitioner's compensation comes to Rs.1652952/- and the said amount stands deposited in the Court on

09.04.2014."

17. The learned counsel for the appellant has placed strong reliance upon the interim order of the High Court dated 03.07.2003 and this Court vide interim order dated 19.03.2012 passed "status quo" regarding possession of land involved in the proceedings which is in force in support of plea for grant of relief under Section 24(2) of the Act of 2013 as the appellant has been in actual physical possession of the land and not been paid compensation in respect of the acquired land and building. The award was passed by the Land Acquisition Collector in this case on 08.10.2003 which is more than 5 years as on 01.01.2014, when the above Act came into force and undisputedly the deposit of the compensation payable to this appellant as per the statement of fact sworn to in the affidavit referred to supra is on 09.04.2014 which is more than 5 years from the commencement of the Act of 2013.

18. In view of the aforesaid undisputed fact, the acquisition proceedings of land and building of this appellant are lapsed since the acquisition proceedings of the land and building of the appellant under Section 24(2) of the Act of 2013.

19. The interpretation of Section 24(2) of the Act of 2013 has been made by this Court in Pune Municipal Corporation and Anr. v. Harakchand Misirimal Solanki & Ors.[2], Union of India & Others v. Shiv Raj & Others[3], Bimla Devi & Others v. State of Haryana & Others[4], Bharat Kumar v. State of Haryana & Another[5] and Sree Balaji Nagar Residential Association v. State of Tamil Nadu & others[6]. The relevant paras 20 and 21 from the three Judge Bench judgement of this Court in Pune Municipal Corporation & Anr. case (supra) are extracted hereunder:-

"20.....it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.

21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals the 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of the 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation."

20. Further, this Court in the case of *Sree Balaji Nagar Residential Association v. State of Tamil Nadu & Ors.*[7], held that Section 24(2) of the Act of 2013 does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court. It was conclusively held that the Legislature has consciously omitted to extend the period of five years indicated in Section 24(2) of the Act of 2013 for grant of relief in favour of land owners even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason.

21. In the light of the above findings recorded by us on the rival factual and legal contentions, and considering the averments made in the application and documents produced on record and after examining Section 24(2) of the Act of 2013 along with the decision of Pune Municipal Corporation and other cases referred to supra, we are of the considered view that the plea of the appellant should be accepted and relief as prayed for has to be granted for the undisputed reason that the Award was passed on 08.10.2003 and five years have elapsed long back and the compensation undisputedly was not paid within 5 years to the appellant. The conditions mentioned in Section 24(2) of the Act of 2013 are satisfied by the appellant for allowing the plea as stated by him that the land acquisition proceedings in respect of his acquired land and building must be deemed to have lapsed in terms of Section 24(2) of the Act of 2013. The above mentioned three Judge Bench decision and other cases of this Court

referred to supra with regard to the interpretation made under Section 24(2) of the Act of 2013, would be aptly applicable with all fours to the fact situation in respect of the land covered in this appeal.

22. In view of the aforesaid findings and reasons recorded by us, the prayer made in the application of the appellant is allowed holding that the acquisition proceedings in respect of the appellant's land/building have elapsed. I.A. No. 5 is allowed. The appeal is disposed of in the above said terms by quashing the acquisition proceedings of the land/building of the appellant.

[1] [2] (2001) 7 SCC 545 [3] [4] (2014) 3 SCC 183 [5] [6] (2014) 6 SCC 564 [7] [8] (2014) 6 SCC 589 [9] [10] (2014) 6 SCC 586 [11] [12] Civil Appeal No. 8700 of 2013 [13] [14] 2014 (10) SCALE 388