

(2010) 05 P&H CK 0129

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Rajinder and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: May 6, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226
- Land Acquisition Act, 1894 - Section 17, 4, 5A, 6

Citation: (2010) 2 ILR (P&H) 908

Hon'ble Judges: M.M. Kumar, J; Jitendra Chauhan, J

Bench: Division Bench

Judgement

M.M. Kumar, J.

The challenge in this petition, filed under Article 226 of the Constitution, is to the notification dated 4.11.2009 (P-7), issued u/s 4 read with Section 17(2)(c) of the Land Acquisition Act, 1894 (for brevity, ~~the~~ the Act").

2. Petitioner Nos. 1 to 3 are owners of the land measuring 24 Kanals, comprised in Khewat No. 104/108, Khasra No. 91/3, 4 and 8, situated in the revenue estate of village Sunari Khurd, District Rohtak, as per jamabandi for the year 2004-05 (P-1). Out of the aforementioned land, 23 Kanals 14 Marlas of land, was leased out by petitioner Nos. 1 to 3 in favour of Gramin Bal Vikas Shiksha Samiti, Sunari Khurd, for a period of 35 years, vide registered lease deed dated 13.3.2006 (P-4). It is claimed that the said Samiti is running a school, namely, Saraswati Devi Vidya Mandir High School, Sunari Khurd (Rohtak), of which petitioner No. 3-Dinesh Kumar is the Principal. The said school is using the land in question as a play ground for the students of the school although it is situated at a distance of one kilometer from the land in question.

3. It has been pointed out that in the year 2004 about 50 acres of land was acquired for the construction of a police complex whereon construction activities are going

on. Other than this, 54 acres 2 Kanals and 17 Marlas of land belonging to the Gram Panchayat, Sunari Khurd, which is near to the area of police complex, was sold to the Government for the purposes of construction of a new District Jail. Approval regarding sale of the said land was granted on 6.6.2005 (P-6). On 4.11.2009, a notification u/s 4 read with Section 17(2)(c) of the Act was issued by the respondent State for acquisition of land measuring 328 Kanals 0 Marlas for a public purpose, namely, for the purpose of water works for the police complex. By invoking the emergency provisions u/s 17(2)(c) of the Act, the requirement of filing of objections u/s 5A of the Act was dispensed with (P-7). It has been alleged by the petitioners that the land sought to be acquired is at a distance of about 32 acres from the police complex, which is canal irrigated. It is also pointed out that in between the proposed new District Jail and the police complex about 40 acres of vacant land belonging to the Gram Panchayat is available and the nature of said land is Barani, which could be acquired for the alleged public purpose. The petitioners have also placed on record a site plan showing their land in Red colour, the panchayat land in Yellow colour, the new District Jail in Green colour and the police complex in blue colour (P-8).

4. The petitioners have filed the instant petition on 6.1.2010 with the grievance that no emergency is involved for acquisition of the land in question by invoking the provisions of Section 17(2)(c) of the Act, inasmuch as, earlier the land was acquired/purchased during the years 2004-2005 for the construction of new police complex and new District Jail. After a lapse of more than five years, the present acquisition is being made invoking the emergency provisions for the purpose of construction of water works for the new police complex.

5. In the preliminary submissions of the written statement filed on behalf of the respondent it has been asserted that the Government of Haryana decided to set up a new Headquarter for a Battalion of Haryana Armed Police and to shift the Police Lines, Rohtak from its existing location to the area of Sunari Khurd, District Rohtak. For the said purposes, land measuring 54 acres 2 Kanals and 17 Marlas for Police Lines and 78 Acres 3 Kanals and 4 Marlas for Haryana Armed Police Battalion Head Quarter was purchased from the Gram Panchayat Sunari Khurd in the year 2005 (R-1 & R-2). Subsequently, it was also decided to set up a Regional Forensic Science Laboratory, Head Quarters of two Indian Reserve Battalions and Police Training College near new Police Lines, Rohtak. For the said purposes total land measuring 280 Acres 5 Kanals and 9 Marlas was purchased from the Gram Panchayats of villages Sunari Khurd, Garnauthi and Marodhi Jattan (R-3 to R-5). Other than this land measuring 117 Acres 1 Kanal and 19 Marla was also purchased from the Gram Panchayat, Sunari Khurd for construction of New District Jail by the Jail Department, Haryana. It has also been highlighted that the Gram Panchayat, Sunari Khurd retained 40 acres of land with it because of existence of an old temple, Gaushala and double story Dharmshala in between the New Police Complex and New District Jail.

6. It has been mentioned that there is no potable ground water in the land which is either purchased from the Gram Panchayat or earlier acquired for the aforesaid purposes. In that regard, a report from the Water Testing Laboratory, Public Health Engineering Department, Rohtak, dated 25.1.2010, has been placed on record (R-6). It has been further pointed out that there are large number of trainees and recruits who are undergoing training in the Police Complex since December 2009. Besides this 600 family quarters are to be constructed out of which 421 quarters are ready for occupation. Still further, as per communication dated 10.3.2010, sent by the Executive Engineer, Haryana Police Housing Corporation, Rohtak, construction of Senior Secondary School, Hospital, Shopping Centre, infrastructure for the Police Complex i.e. line office, Armory Barracks, Mess and Administration Block etc. has to be undertaken immediately. The work of construction of New Jail is also in full swing which is to be completed in two phases. The civil work of the complex would be ready by 30.6.2010. Therefore, it has been emphasised that provision of water supply and sewerage facilities is the essence of the entire project, which could not be accomplished until and unless the proposed Water Works is established. In other words, by furnishing the above mentioned detail the respondent has tried to assert that since there was emergency that is why provision of Section 17(2)(c) of the Act was invoked while issuing impugned notification dated 4.11.2009 (P-7). It is also important to notice here that in para No. 7 of the reply on merits it has also been mentioned that declaration u/s 6 of the Act was made on 8.4.2010 (R-9). It is, thus, apparent that declaration u/s 6 has been made after six months and seven days of the issuance of notification u/s 4 of the Act. Further in para No. 10 the stand taken is that the action of the State for invoking emergency provisions of Section 17(2)(c) of the Act was taken after due application of mind.

7. During the course of arguments, the petitioners confined their prayer to challenge the invocation of urgency provisions because the gap between notification u/s 4 and declaration made u/s 6 of the Act is six months and seven days; and inquiry u/s 5A of the Act could have easily been undertaken, inasmuch as, only a period of 30 days was required. In support of their claim, learned Counsel for the petitioners has placed reliance on the judgments of Hon'ble the Supreme Court rendered in the cases of Union of India (UOI) and Others Vs. Mukesh Hans etc., and Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another, . On the basis of the law laid down by Hon'ble the Supreme Court, it has been argued that there is totally non-application of mind for dispensing with enquiry u/s 5A of the Act. Learned Counsel for the petitioners has vehemently argued that invocation of urgency/emergency would not ipso facto result in dispensing with inquiry contemplated by Section 5-A of the Act. According to the learned Counsel even in cases where Section 17 is invoked, inquiry u/s 5-A is possible and in case the urgency is of such a nature that it cannot brook delay even of 30 days then the record must speak for such a hurry. According to the learned Counsel mere invoking of urgency/emergency provisions of Section 17 of the Act does not automatically result

in dispensing with enquiry u/s 5A of the Act.

8. On the other hand, learned State counsel has argued that in cases of urgency/emergency, there is no specific requirement of recording reasons for dispensing with inquiry contemplated by Section 5A of the Act. He has maintained that once Section 17 of the Act has been invoked then urgency is presumed to exist and the procedural detail in finalising the acquisition proceedings would not adversely affect legally invoked urgency provisions of Section 17 of the Act.

9. We have heard learned Counsel for the parties at length and also perused the pleadings with their able assistance. In order to satisfy ourselves, we summoned the record and noticed the file which clearly spells out that at no stage, the Government Officers have applied their mind to come to a conclusion that an enquiry contemplated by Section 5A of the Act has to be dispensed with keeping in view the urgency/emergency of public purpose. In other words, Section 17(2)(c) of the Act in the present case has been invoked with the understanding that enquiry u/s 5A of the Act is automatically dispensed with, which is not to be construed as correct legal position. A perusal of the record shows that there is no application of mind highlighting that the urgency of establishing the Water Works for New Police Complex at Village Sunari Khurd was of such a nature that the land was required immediately and there was no time to hold an inquiry u/s 5A of the Act. For ready reference, the relevant noting portion of the file is extracted as under:

Subject: Acquisition of Land measuring 41 Acre 1 Marla for construction of water works for new police Complex at Sunaria Khurd, Rohtak.

This case relates to Acquisition of Land measuring 41 Acre 1 Marla for construction of water works for new police Complex at Sunaria Khurd, Rohtak. D.G.P. Hr. has forwarded draft notification u/s 4 read with Clause (c) of Sub-section (2) of Section 17 of the Land Acquisition Act-1894 for Acquisition of Land measuring 41 Acre 1 Marla for construction of water works for new police Complex at Sunaria. Draft notification u/s 4 at Flag "A" has been prepared both in English & Hindi for the purpose land placed below for favour of approval of worthy F.C.H/CM and thereafter vetting by L.R. Haryana.

In view of the above submission the case may be submitted to worthy FCH/CM for approval thereafter the case will be sent to L.R for vetting.

Sd/- Poonam Rathee/22-9-09

SHG-II

In view of the position explained above this case may be submitted to worthy FCH/CM for approval

Sd/-

[K.S. Mehra]

SH-II 22/9/09

May keep it pending till C.O.C. is over

Sd/- 24/9

DSH(C)

SSHI (OT) 24/9/09

FCH

Sd/- 25/9/09

(Krishna Mohan)

FC Home

CM

CM has approved.

Sd/-

(M.L. Tayal)

PSCM

30.9.2009

10. It is pertinent to notice here that the words in italics appearing in the noting dated 22.9.2009 i.e. ~~◆~~read with Clause (c) of Sub-section (2) of Section 17" seems to be added later on because the same are hand written instead of typing.

11. It is trite to mention that law concerning compulsory acquisition of land has to be considered strictly as it is an expropriatory legislation. In that regard, reliance may be placed on the judgments of Hon"ble the Supreme Court in the cases of *Devinder Singh v. State of Punjab* (2008) 1 SCC 728 and [Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others](#). It follows that the provisions of Section 17 of the Act have to be examined in the light of the aforesaid principle of construction laid down by Hon"ble the Supreme Court. Section 17(4) of the Act reads thus:

17(4). In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (2) are applicable, the appropriate government may direct that the provisions of Section 5-A shall not apply, and if it does do direct, a declaration may be made u/s 6 in respect of the land at any time after the date of the publication of the notification u/s 4 Sub-section (1).

12. The aforesaid provision clearly spells out that the appropriate Government is under an obligation to take an express and a conscious decision that provisions of Section 5-A are not to apply and it is thereafter that declaration u/s 6 could be issued at any time after the publication of the notification u/s 4(1) of the Act. The aforesaid provision came up interpretation of their Lordships of Hon"ble the Supreme Court in the case of *Mukesh Hans* (supra). The principle enunciated by their Lordships" is

discernible from para 32 of the judgment, which reads thus:

32. A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4) that by itself is not sufficient to direct the dispensation of 5A inquiry. It requires an opinion to be formed by the concerned government that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with 5A inquiry which indicates that the Legislature intended that the appropriate government to apply its mind before dispensing with 5A inquiry. It also indicates the mere existence of an urgency u/s 17(1) or unforeseen emergency u/s 17(2) would not by themselves be sufficient for dispensing with 5A inquiry. If that was not the intention of the Legislature then the latter part of Sub-section (4) of Section 17 would not have been necessary and the Legislature in Section 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically 5A inquiry will be dispensed with. But then that is not language of the Section which in our opinion requires the appropriate Government to further consider the need for dispensing with 5A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with 5A inquiry does not mean that in and every case when there is an urgency contemplated u/s 17(1) and unforeseen emergency contemplated u/s 17(2) exists that by itself would not contain the need for dispensing with 5A inquiry. It is possible in a given case the urgency noticed by the appropriate Government u/s 17(1) or the unforeseen emergency u/s 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry u/s 5A but then there is a need for application for mind by the appropriate Government that such an urgency for dispensation of the 5A inquiry is inherent in the two types of urgencies contemplated u/s 17(1) and (2) of the Act.
(emphasis added)

13. A perusal of the aforesaid para shows that an opinion is required to be formed by the State Government that along with the existence of urgency or unforeseen emergency contemplated by Section 17(1) and Section 17(2) respectively, there is also a need for dispensing with Section 5-A inquiry. The aforesaid provision indicates that the Legislature intended the appropriate Government to apply its mind before dispensing with Section 5-A inquiry. It has further been pointed out that mere existence or unforeseen emergency would not by itself be sufficient for dispensing with Section 5-A inquiry. It means, even in cases of urgency or emergency right to file objections and grant of an opportunity to hearing u/s 5A of the Act may still be kept intact. The decision of Mukesh Hans's case (supra) has been followed and applied in the case of Essco Fab (supra). Furthermore, this Court while deciding the cases of Punita Chaudhary and Ors. v. State of Haryana CWP No. 3129 of 2008,

decided on 8.12.2008 and Bhopu and Ors. v. State of Haryana and Ors. CWP No. 16832 of 2003, decided on 18.1.2010, has also followed the aforesaid decision.

14. When the aforesaid principles are applied to the facts of present case, it becomes evident from the perusal of the original record that there is no decision with regard to dispensing with inquiry u/s 5-A of the Act. The office note dated 22.9.2009, would show that a proposal for acquisition of 41 acres and 1 Marla of land for construction of Water Works for New Police Complex at Sunaria Khurd, Rohtak, under emergency clause was put up. The matter was processed through the Financial Commissioner Haryana. There is no whisper with regard to dispensing with inquiry u/s 5-A of the Act what to talk of taking any decision for dispensing with such an inquiry showing that there is complete lack of application of mind as required by the principle laid down in Mukesh Hans's case (supra). In the absence of any such decision dispensing with Section 5-A enquiry, Section 17(4) of the Act could not alone be invoked to defeat the vital rights of hearing and filing objections by the land owners.

15. As a sequel to the above discussion, the instant petition succeed and the impugned notification u/s 4 of the Act, dated 4.11.2009 (P-7) and declaration u/s 6 of the Act, dated 8.4.2010 (R-9) or any other proceedings pursuance to such declaration are hereby quashed qua the petitioners. The respondent State, however, is not debarred from acquiring the land in question in accordance with law.