

(1992) 03 P&H CK 0022

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 14735 of 1991

Jaswant Singh and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision: March 5, 1992**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 83
- Land Acquisition Act, 1894 - Section 18, 4, 6

Citation: (1994) 1 ILR (P&H) 421**Hon'ble Judges:** S.S. Sodhi, J; G.C. Garg, J**Bench:** Division Bench**Advocate:** K.S. Kundu, R.S. Tacoria and J.B. Tacoria, for the Appellant; R.C. Setia, Addl. A.G., R.S. Mittal and R.K. Sharma, for the Respondent

Judgement

S.S. Sodhi, J.

The challenge here is to the acquisition of the Petitioner's land. The extra-ordinary feature of this acquisition being the permission granted to the Company, for whom it had been acquired, to pay compensation for it by the sale of this very land. It was over 17 years ago that this land had been acquired and the enhanced compensation for it has yet to be paid to the landowners, what is more, during all this period, the land too has not been utilized for the purpose for which it had been acquired. In the context; of these circumstances, is the acquisition of land sustainable? Herein lies the controversy raised.

2. It was as far back as July 2, 1973 that a notification u/s 4 of the Land Acquisition Act 1894 (hereinafter referred to as "the Act") was issued for the acquisition of 358 Kanals of land which included about 90 Kantils of land belonging to the present Petitioners. It was stated in this notification that this land was "needed by the government, at public expense for a public purpose, namely, the setting up of a Sheet Glass Industry". The notification u/s 6 of the Act followed on September 4,

1973.

3. Next, on June 20, 1974 came the Award of the Collector awarding Rs. 3,93,688.12 paise as compensation for the land acquired. This amount was paid to the landowners on October 16, 1974, on which date possession of the acquired land was taken and handed over to the Respondent-Company in pursuance of the conveyance deed annexure P/II, executed in his favour on that very day. This Conveyance Deed recited that the Government had acceded to the Respondent-Company's request for acquisition of land for the setting up of an industry for the manufacture of sheet-glass and had agreed to transfer the acquired land to it on conditions incorporated therein. These conditions inter alia provided that the Respondent-Company would pay any enhanced compensation for the land as may become payable by the orders of this Court and that the land would be used exclusively for the purposes of the factory and that no part of this land shall, in any manner, be transferred without the prior written permission of Government. Further, it was provided that the factory would be constructed within a year of the date of the execution of the Conveyance Deed or two years of possession being delivered, whichever period expired earlier. The Government specifically reserved to itself the right to resume the land if the Respondent-Company failed to "observe and perform" any of the covenants of the Deed.

4. The landowners, on their part, went up in reference u/s 18 of the Act. On January 29, 1979, the Additional District Judge, Rohtak enhanced the compensation payable for the acquired land by Rs. 59,349. This compensation was further enhanced by Rs. 8.10 lakhs by the judgment of this Court of June 2, 1988. As mentioned earlier, no such enhanced compensation has so far been paid to the landowners.

5. Non-payment of enhanced compensation by the Respondent-Company, eventually led the landowners to initiate execution proceedings against it. On October 11, 1986, the court of the Additional District Judge, Rohtak was moved in this behalf and sometime in 1987, the acquired land came to be attached. It was during these proceedings that on May 7, 1991, the Respondent-Company sought and obtained from the Court permission to veil the acquired land to pay compensation for it to the landowners. This order being of May 7, 1991. annexure P/1. Pertinent to note is, that this order came to be passed behind the Petitioners back and without notice to them.

6. Here, it is the allegation of the Petitioners, as set-forth in the replication filed to the return of the Respondent-Company, that this Company was now seeking to establish a residential colony on the acquired land by carving out plots of 200 and 400 square yards each at a tentative price of Rs. 300 per square yard. It was pointed out with emphasis, in this behalf, that the highest compensation for the acquired land, as awarded by this Court, was only Rs. 5.50 per square yard.

7. The setting up of a residential colony or the acquired land being sought to put to any such use has however, been categorically denied by the Respondent-Company as also the issuance of any advertisements by it inviting applications for plots out of the acquired land.

8. Be that as it may, the fact remains that the, Respondent-Company has admittedly obtained permission from the Court to sell the acquired land to pay for it. Keeping in view the tremendous escalation in the prices of land, particularly in and around the area where the acquired land is situated, since the date of the acquisition of this land, the result inevitably would be that if sold today, the sale proceeds of merely a portion of the land acquired would suffice to pay the entire-compensation for it, as assessed at its 1973 value, that is, the date when it was acquired and in this manner, the Respondent-Company would become owner of the major chunk of it without it having to pay anything out of its own pocket for it. Unjust enrichment cannot, therefore, but be held to be writ large.

9. The stand taken by the Respondent-State in this matter is that the challenge to the acquisition of land stands barred by laches, and as for the Respondent-Company, for whom it had been acquired, the conveyance deed, annexure R/II was being studied in contemplation of a show-cause notice being issued to it, in view of the report of the District Town Planner, Rohtak and the General Manager, District-Industries Centre, Rohtak annexure R/1, the relevant extract thereof, reads as under:

From the site visit, it was found that the factory has not come into existence. The Company after submission of building plans constructed boundary wall, overhead water storage tank, Gate and Chowkidar's Room. Six rooms for storage of Cement etc. and dug shallow walls of the tubewell and laid down a few pipes for carrying water to the overhead tank. The boundary wall and store rooms are now in a dilapidated condition to representative of the Company is available at Bahadurgarh. However, a few Chowkidars have been engaged by the Company who were available at the site.

The Company was served with a notice in April 1981 by the Ministry of Industry, Department of Industrial Development, Government of India for revoking the industrial licence granted to them. In reply to this notice, they sought extension up to 30th April, 1982 on the plea that they could not construct the building since their building plans were not approved. It is not clear whether their extension was granted or the licence was withdrawn.

Further, it was said that steps have since been initiated for the resumption of the acquired land.

10. In seeking to explain the acquisition of the land for the Respondent-Company, it was further averred in the return filed by the Respondent-State, that on May 13, 1971 Messes: Northern India Glass Industries, Faridabad, had put-forth proposals to

the State Government for the setting up of a 30000 Tons Sheet Glass Manufacturing Unit with an investment of about Rs. Four, Crores. A letter of intent had been obtained by the Company from the Government of India for the implementation of this project. The employment potential envisaged being about 1,000 workers. It was keeping the viability of the project in view and the steps taken by the Company for the implementation of the Project that the State Government proceeded to issue notifications for the acquisition of this land under the Land Acquisition Act.

11. Further, it was pointed out that according to the terms of the Conveyance Deed, annexure R/II, the Respondent-Company was liable to pay to Government any additional amount that may have been paid by the State Government on account of enhancement of compensation payable for the acquisition of the land. This provisions, it was averred, clearly showed that the enhanced Compensation was to be paid by the Government and the State Government was in turn, entitled to recover such amount from the Respondent-Company. The State Government was, however, not made a party to the proceedings for seeking and recovering enhanced compensation for the acquired land.

12. What is so pertinent to note is that the Respondent-State too clearly and categorically branded it a case of unjust enrichment on the part of the Respondent-Company, which obviously stood to gain by the orders passed by the Court for attachment and sale of the acquired land through auction. It was averred in this behalf that it appeared that the Respondent-Company had purposely not brought the terms of the Conveyance Deed to, the notice of the executing court, as it wanted to unduly enrich itself. The matter of issuance of show-cause notice for resumption of this land, as the Company had failed to set up the project on this land, it was said, was, therefore, being separately considered in right earnest.

13. To wriggle out of this situation, the Respondent-Company too sought cover under the plea of laches, namely; that the petition was not Being filed 18 years after the acquisition of the land and further that the Petitioners having accepted the compensation awarded by the Land Acquisition Collector, were now estopped from challenging it. The main thrust of its defence, was however, founded upon the justification sought to be put-forth for the factory not having been set up for all these, years by seeking to project the reasons for it. as being beyond its control. What was said in the return was, "The real facts. are that ,the answering Respondent had been actively and vigorously trying to set up the project up to 1981-82 and has spent almost Rs. 27 lakhs by way of initial investments, for getting the building plans prepared and placing orders for the machinery required for setting up the project, but the efforts of the answering Respondent were frustrated by the Director, Town and Country Planning, Government of Haryana and other agencies. In the year 1981, the Government of India also cancelled the industrial licence issued in favour of the answering Respondent, which was challenged by the answering Respondent in the Delhi High Court by means of Civil Writ petition filed in the month of July, 1981

and the interim stay was also granted by the Delhi High Court. Thereafter, the land-owners entangled the answering Respondent in a costly litigation regarding enhancement of compensation of the land in dispute which has been acquired by the company and the factory of the answering Respondent had already been greatly jeopardised on account of escalation of the cost of construction and the project which was conceived in the year 1974. The advancement of science brought in new and cheaper technologies and the orders placed by the answering Respondent for the supply of machinery incorporating the old technologies know how up to 1974, became absolute. All these factors broke the economic backbone of the answering Respondent and that is why the project could not be set up---."

14. As regards the non-payment of enhanced compensation to the landowners, the explanation put forth being, the answering Respondent was not able to pay the enhanced compensation because of the tight economic situation in which it was placed on account of the losses suffered by it, due to delay in the execution of the project, which was conceived in the year 1974 and in addition, to the escalation in the cost for setting up of the project, the answering Respondent lost nearly Rs. 27 Lakhs in getting the building plan prepared, placing orders for the machinery, which machinery could not be brought in and installed, due to non-sanctioning of the building plans by the authorities of Respondent-1 after a long, period of 7 years (From 1974 to 1981) and other expenses which included the expenses of setting up part of the building for receiving the machinery to be installed and the penalty paid therefor, on account of starting the construction before the actual sanction of the building plan only in anticipation of the sanction. In the year 1977, there were unprecedented floods in the area of Bahadurgarh town and village Sankhol. The water that accumulated during that flood remained stagnant for three long years and whatever building and machinery had been installed thereon was rendered a total loss. The answering Respondent had no money to pay the enhanced compensation and, therefore, the same could not be paid.-----

15. Turning to the sale of the acquired land by the Respondent Company to pay the enhanced compensation awarded for it to the landowners, it was said,"----Since the land which had been attached in the execution proceedings would have been sold by auction and that would not have fetched a reasonable price for the land in dispute which now belongs to the Answering Respondent, the answering Respondent made an application under Order 21 Rule 83 of the Code of Civil Procedure; for permission to sell the land in order to pay the enhanced amount of compensation to the various land-owners, including the Petitioners.---"This application was later allowed.

16. Further, it was pointed Out that two drafts, one for Rs. 3 Lakhs and the other for Rs. 2.7 Lakhs had since been deposited in Court. The remaining Rs. 3 Lakhs was to be paid on October 5, 1991. It was got prepared, but it was not paid as in the mean while, the Petitioners had obtained a stay order from this Court.

17. The picture that thus emerges is that more than 17 long years have gone-by and the landowners have yet to be paid the compensation for their land that they were entitled to and the acquired land itself has yet to be put to the use for which, it had been acquired. What is more, the Respondent-Company now proposes to sell a part of this acquired land to pay compensation for it to the landowners and thereby become the full owner of the remainder. Such being the inevitable consequence of the appreciation in the value of the land since its acquisition, which in turn, cannot but render the payment for the acquired land now in 1992 at its 1973 market value wholly illusory. This is what constitutes the significant aspect of the matter here.

18. Confronted with this situation, both the Respondents-Company as also the Respondent-State have sought to press in aid the judgment of the Supreme Court in *Aflatoon and Ors. v. Lt. Governor of Delhi and Ors.* AIR 1974 SC 2077, to contend on the basis thereof that laches on the part of the Petitioner in not challenging this acquisition, for so many years, must clearly bar them from doing so now.

19. In *Aflatoon's* case (*supra*), the challenge to the acquisition of land was *inter alia* on the ground of inordinate delay in finalizing the acquisition proceedings thereby denying to the landowners the benefit of the appreciation in the value of the property between the issuance of the notification u/s 4 of the Act and possession of the property acquired being taken from the landowners. This plea was held to be barred by laches, keeping in view the fact that the notification u/s 4 of the Act had been issued as far back as 1959 and that u/s 6 of the Act on 1966, whereas the writ petition to challenge this acquisition had not been filed till 1972. The Court, in this behalf observed,---A valid notification u/s 4 is a *sine qua non* for initiation of proceedings for acquisition of property. To have sat on the fence and allowed and Government to complete the acquisition proceedings on the basis that the notification u/s 4 and the declaration u/s 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics---"This view was later reiterated in *Smt. Ratal Devi and Anr. v. Chief Commissioner Delhi and Ors.* AIR 1975 SC 1899.

20. The rationale in *Aflatoon's* case (*supra*) is clearly not applicable, in a case like the present, where compensation for the acquired land has yet to be paid to the landowners and the landowners have, at no stage sat back or adopted any delaying or dilatory tactics.

21. As regards the reasons put-forth by the Respondent-Company for the acquired land not having been put to the use for which it had been acquired, that is clearly not a matter for this Court, in these proceedings, to sit in judgment upon. What is of relevance is the fact that this land had not so far been utilized for its proper purpose and further that even the industrial licence granted to the Respondent-Company for the Project stood cancelled as far back as 1981. These circumstances have their own tale to tell.

22. Turning to the Respondent-State, the marked feature of its role and conduct, in the matter, is its total unconcern and inaction, in seeking to ensure the fulfillment of the terms of the Conveyance Deed annexure R/II, or even those of the acquisition itself, particularly, those relating to payment of compensation to the landowner, it cannot, therefore, but invite adverse comment.

23. Before proceeding further, it must be observed that serious challenge to the acquisition of the land had also been made by the counsel for the Petitioners on the ground of non-compliance with the provisions of Part-VII of the Act. This is a matter which we need not, however, go into, as in our opinion, the acquisition of the land cannot even otherwise be sustained.

24. Keeping in view the interests of justice, in the context of the extra-ordinary situation, as has been revealed here, it clearly renders it incumbent that the acquisition of the land be quashed and it be directed to be reverted in the Petitioners-landowners. If this is not done, the Respondent-Company would end-up being unjustly enriched at the expense of the Petitioners merely by this long passage of time and that too in the context of the land acquired not being put to the use for which it had been acquired on the landowners being paid their due compensation for it. We consequently hereby quash the notification u/s 4 and 6 of the Land Acquisition Act, 1894, in so far as they pertain to the land of the Petitioners. The Petitioners, shall, of course, be liable to refund the compensation received by them in respect of this land. They are hereby given three months time to repay to the Land Acquisition Collector, the compensation received by them. This amount, in turn, be refunded to the Respondent-Company.

25. Keeping in view the fact that the Petitioners had been deprived of possession of their land since the compensation awarded to them, by the Land Acquisition Collector was paid to them no interest shall be payable by them on such amount.

This writ petition is consequently hereby accepted in these terms, with Rs. 1,000 as costs.