

(1993) 05 P&H CK 0016

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 2767 of 1982

Arvind Kumar and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: May 14, 1993

Acts Referred:

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

Citation: (1994) 106 PLR 59

Hon'ble Judges: Jawahar Lal Gupta, J

Bench: Single Bench

Advocate: M.S. Jain and Adarsh Jain, for the Appellant; Jaswant Singh, for the Respondent

Final Decision: Dismissed

Judgement

Jawahar Lal Gupta, J.

This order will dispose of Civil Writ Petition Nos. 2735, 2749 and 2870 of 1982. Learned counsel for the petitioners has referred to the facts in Civil Writ Petition No. 2767 of 1982. These may be briefly noticed.

2. The State of Haryana issued a Notification u/s 4 of the Land Acquisition Act, 1894 on September 18, 1973 expressing its intention to acquire land for a public purpose namely the development and utilisation of land measuring 238.35 acres as industrial area for Sectors 31, 32, 35 & 36 in Ballabhgarh, Faridabad Controlled Area. This Notification was allowed to lapse. Another Notification was published in the Gazette on November 4, 1977 u/s 4 of the Act for providing that "land described in the specification below is required for the development and utilisation of land as Industrial areas in Sector Nos. 31,32, 35 and 36 of the Faridabad-Ballabhgarh Controlled Areas by the Haryana Urban Development Authority." Land measuring 238.05 acres situated in Village Meola Maharajpur was the subject matter of this notification. This was followed by a Notification dated November 1,1980 u/s 6 by

which the Government decided to acquire only 80.73 acres of land out of the total of 235.05 acres. Aggrieved by the notifications under Sections 4 and 6, the two petitioners have approached this Court through this writ petition.

3. It has been inter alia averred that they own land measuring 4 kanals 11 marlas out of the land which is sought to be acquired. It has been further averred that construction in the form of quarters and other buildings for running industry had been raised by the petitioners and their father on the aforesaid land in the year 1962. They claimed to be carrying on the business of making wooden packing cases under the name and style of M/s. Woodpack since 1966 on this land. Averring that the successive notifications were issued by the Government with the oblique purpose of pegging down the prices and that land of other industrialists situated on the four sides of the property of the petitioners had been exempted from acquisition, the petitioners challenge the two notifications copies of which have been produced on record as Annexures P-2 and P-3.

4. In the written statement filed on behalf of the respondents, it has been inter alia averred by way of a preliminary objection that the petitioners have invoked the jurisdiction of this Court after the expiry of more than 4 years and that the petition suffers from inordinate delay and laches. On merits, it has been admitted that initially a notification u/s 4 was issued in the year 1973 but notification u/s 6 could not be issued "due to heavy rush of work with the land Acquisition Collector and thus notification u/s 4 lapsed after the expiry of 3 years of period." It has been further averred that after the issue of notification dated November 4, 1977 u/s 4 of the Act, the notification u/s 6 was issued on November 1, 1980 within the stipulated period of three years and that the allegation of the petitioners that respondent No. 1 took no action for taking up further proceedings for acquisition of land was wrong and has been denied. With regard to the petitioners' averment that the action suffers from the vice of discrimination, it has been averred that "the land which could be adjusted has been adjusted. There is no discrimination with the petitioners as alleged." It has been further averred that the land is being acquired for a public purpose and that the writ petition deserves to be dismissed.

5. I have heard Mr. M.S. Jain, learned counsel for the petitioners in all the four cases and Mr. Jaswant Singh, learned counsel appearing for the respondents.

6. The contentions raised by Mr. Jain are that the successive notifications have been issued by the Government for the oblique purpose of pegging down the prices and that infact there was no bonafide need for the acquisition of land. He has also contended that land of various Industrial units on all four sides of the property of the petitioners has been exempted from acquisition while a similar relief has been arbitrarily denied to the petitioners. According to the learned counsel, the action suffers from the vice of discrimination. It has been further contended that even the procedure prescribed in the standing orders has not been followed and that in two cases, same notification has already been quashed by this Court. Reference in this

behalf has been made to the decisions in Civil Writ Petition Nos. 867 of 1982 and 2332 of 1983 decided on August 10, 1982 and August 8, 1983 respectively.

7. On the other hand, Mr. Jaswant Singh, learned counsel appearing for the respondents has contended that the petition suffers from the vice of delay in as much as it has been filed more than four years after the issue of the notification. He further contended that the State Government has the jurisdiction to issue successive notifications and that the action of the respondents in the present case was in strict conformity with law. He submits that the suggestion on behalf of the petitioners that the State Government was trying to peg down the prices or that its action suffers from the vice of discrimination or that there was any violation of the prescribed procedure or delay in carrying out the execution proceedings is wholly unfounded. He further submits that no charge of discrimination can be sustained on the vague and unsubstantiated allegation that the land of certain other industrialists has been excluded from acquisition with reference to the decisions of this Court with regard to the two impugned notifications, learned counsel submits that the orders are based on concession by counsel and are not on merits so as to constitute a binding precedent. On these premises, learned counsel has controverted the claim made on behalf of the petitioners.

8. Within this Court, the view initially pronounced was that the acquisition proceedings must be conducted expeditiously. Unexplained and inordinate delay in finalisation of proceedings was held to taint the acquisition proceedings with the vice of colourable exercise of power. This view was affirmed and pronounced by the Full Bench of this Court in *Radhey Shyam Gupta v. State of Haryana* (1982) 84 P.L.R. 743 (F.B.). A number of cases, that came up before this court in early eighties or around that time, were decided on the basis of this Full Bench judgment, and consistently the view taken was that delay vitiated acquisition proceedings. It is on this basis that CWP Nos. 867 of 1982 and 2332 of 1983 were allowed by this Court. However, it appears that the view taken by the Full Bench of this Court in *Radhey Shyam's* case was not accepted by the Apex Court. In fact, in *State of Punjab v. Hari Om Cooperative House Building Society Amritsar* 1987 S.C.C. 687 their Lordships were pleased to observe as under:-

"1. Special leave granted. We have heard the learned counsel for the parties. The writ petition, out of which this appeal arises, was allowed by the High Court following its decision in *Radhey Sham v. State of Haryana* which has been disapproved by this Court in a large number of cases. The writ petition was filed a long time after the publication of the notification u/s 4 of the Land Acquisition Act and of the declaration u/s 6 of that Act. We do not find any merit in the writ petition. We, therefore, set aside the judgment of the High Court and dismiss the writ petition filed in the High Court.

2. Shri C.M. Nair, learned counsel for Hari Om Cooperative House Building Society, the respondent in this appeal states that the Government has passed an order

dated 30th October 1981 under sub- section (3) of Section 275 of the Punjab Municipal Corporation Act and the Government has permitted the Hari Om Cooperative House Building Society and its members to build houses on a part of the land acquired. It is open to, Hari Om Cooperative House Building Society to approach the Government for the release of the land in respect of which the said order has been passed by the Government. The acquisition proceedings, however, cannot be defeated by virtue of the order referred to above. With this observation, the appeal is allowed."

9. In fact, even within this Court, the matter came up before another Full Bench in Ghanshyam Dass Goel and Anr. v. State of Haryana (1986) 88 P.L.R. 513 (F.B.). The facts of this case deserve to be noticed briefly. A notification u/s 4 was initially issued on December 15, 1969 for the acquisition of about 203 acres of land. This notification was allowed to lapse. Thereafter, another notification was issued u/s 4 on May 28, 1974 for the acquisition of 203.16 acres of land. This notification was also allowed to lapse. Yet another notification was issued on September 1, 1977 u/s 4 of the Act for the acquisition of land measuring 202.16 acres. Thereafter, a notification u/s 6 was issued on August 1, 1980 acquiring 201.21 acres of land. The petitioners felt aggrieved and challenged the notifications under Sections 4 and 6 of the Act through Civil Writ Petition No. 43 of 1981. The impugned notifications were quashed. Thereafter, the respondents issued a notification u/s 4 of the Act on May 23, 1983 proposing to acquire 201.43 acres of land. On November 20, 1984, a notification u/s 6 was issued whereby land measuring 159.75 acres was finally acquired. These two notifications were challenged on a number of grounds including that there was no bona fide need and that the notifications had been issued for the collateral purpose of pegging down the prices. A specific argument was raised that the notifications which were allowed to lapse could have had the effect of freezing the market price of the acquired land and that the notifications issued on September 1, 1977 and August 12, 1980 having been quashed in CWP No. 43 of 1981, those issued on May 23, 1983 and on November 20, 1984 could not be assailed. The Full Bench inter alia held as under:-

"what has to be seen is the real motivation behind the acquisition and if it is found out that the acquisition is not for any specific public purpose and its expeditious execution, but is a mere use to peg down the prices by an issuance of notification u/s 4 of the Act and thus holding the citizens to ransom for years at whim and caprice of the State to finalize the acquisition proceedings when it chooses, then this would be an important factor for establishing the colourable exercise of power. But in the instant case, the acquisition is for a specific public purpose, the validity of which has not been challenged, namely the development and utilization of land, as residential area and the Government has proceeded to acquire the land by issuing a fresh notification u/s 4(1) of the Act and a fresh declaration u/s 6. The procedure now followed by the Government does not appear to be unfair as the landowners whose land is being acquired would be paid the price of the land as it existed on the

date of the issue of the notification u/s 4 of the Act i.e. 23rd May, 1983. In the circumstances of the case, it would not be fair to plead that the price that is virtually paid to the landowners would be of the year 1969 when the first notification u/s 4 of the Act was issued. In this view of the matter, I find that the impugned notifications do not suffer from any legal infirmity."

10. In view of the binding precedent in Ghanshyam Dass Goyal's case, it appears that the issue of successive notifications is not by itself enough to vitiate the acquisition proceedings nor can it be interpreted to mean that the appropriate authority is actuated by any oblique consideration of pegging down the prices.

11. Mr. M.S. Jain, learned counsel for the petitioners vehemently contended that in the present case, notification u/s 4 was issued in the year 1973, but it was allowed to lapse on the untenable ground that the Land Acquisition Collector could not take further action "due to heavy rush to work". He submits that after the notification u/s 4, virtually no transaction of land takes place. Thereafter, the notification u/s 4 was issued on November 4, 1977 and the final notification u/s 5 was issued on November 1, 1980. The further proceedings in the case were stayed by motion Bench. Even during this no transactions of sale and purchase of land have taken place. As a result, in the year 1993, the petitioner would get the price that existed in the year 1973. In the normal course of events, learned counsel appears to be right once a notification is issued u/s 4, normally no transaction takes place. As a result, the price does get fixed. If the acquisition proceedings are not expeditiously completed, the interest of the land owner is bound to suffer. It is primarily on account of this reason that the Full Bench in Radhey Shyam's case (supra) had taken the view that long and unexplained delay would vitiate the acquisition proceedings and that the petitioner who complained of delay on the part of the authority could not be non-suited on the ground that the petition was belated. However, the Rule in Radhey Shyam Gupta's case having been specifically up-set by the Apex Court and the action of the Government in issuing successive notifications having been up-held by a Full Bench of this Court in Ghanshyam Dass Goyal's case, there is very little that can be done for the petitioners in these cases. One can only hope that some day, the matter would be re-considered. As at present, there is no alternative except to reject the contention that successive notifications were calculated to peg down the prices and amounted to a colourable exercise of power.

12. As for the decisions in C.W.P. Nos. 867 of 1982 and 2332 of 1983 decided on August 10, 1982 and August 3, 1983 respectively, it deserves to be noticed that these orders were based on the judgment in Radhey Shyam Gupta's case. It is correct that SLP No. 7628 of 1983 against the decision in CWP No. 867 of 1992 delivered by the motion Bench on the basis of Radhey Shyam Gupta's case was dismissed. The fact remains that the Rule in Radhey Shyam Gupta's case has not been accepted by the Apex Court as being correct in law. Consequently, the petitioners can derive no advantage from these two orders.

13. It was next contended that the action suffers from the vice of discrimination. In paragraph 8 of the petition, it has been mentioned that 10.28 acres of land has been excluded from the lands of revenue estates of Aurangapur and 88.90 acres of land has been excluded from acquisition Village Serai Khawja. Further, specific instances regarding the land of the factories viz. Boltan Industries on the Northeran side, Ariel Brothers, Fritz and Singh Paper Correctors India Limited on the Southeran side, Indus Precision Castings on the Eastern side and Paras Cold Storage on the Western side have been excluded from acquisition. It has, however, not been mentioned that these Industrial Units are contiguous to the Unit of the petitioners. Supposing these Industrial Units are situated at four corners, and could be excluded from acquisition, the petitioners cannot complain of discrimination merely because their Unit has not been excluded. It is well settled that the onus of proving discrimination lies on the one who complains of it. The petitioners could have furnished complete details to show that other Units which were similarly placed have been excluded. It has- not been so done. In such a situation, the acquisition proceedings cannot be said to suffer from the vice of discrimination.

14. Mr. Jaswant Singh, learned counsel for the respondents contended that the petition deserves to be dismissed on the ground of delay alone. The notification u/s 4 was issued on November 4, 1977, while that u/s 6 was issued on November 1, 1980. The writ petition was filed in June 1982. The petitioner's primary complaint in the writ petition is that the respondents had not acted expeditiously and were guilty of delay. A similar contention was up-held in Radhey Shyam Gupta's case. However, in view of the fact that the view taken by the Full Bench in Radhey Shyam Gupta's case has been dis-approved by the Apex Court and in the case of Hari Om Cooperative House Building Society, the contention regarding delay was up-held, I have no option but to accept the contention raised on behalf of the respondents.

15. It was next contended that the procedure laid down under the Standing Orders had not been followed. The exact details regarding the procedure which may not have been followed, having not been furnished, the contention cannot be accepted.

16. No other point was urged.

17. Accordingly, there is no merit in these two petitions. These are dismissed. In the circumstances of the case, the parties are left to bear their own costs.