(2013) 09 P&H CK 0372

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 19179 of 2013

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| SRS Retreat Services Limited | | APPELLANT |
| | Vs | |
| Union of India and Others | | RESPONDENT |

Date of Decision: Sept. 2, 2013

Citation: (2014) 173 PLR 498

Hon'ble Judges: Surya Kant, J; Surinder Gupta, J

Bench: Division Bench

Judgement

Surinder Gupta, J.

A notification dated 30.8.2010 u/s 20A of Railway Act, 1989 (24 of 1989) (hereinafter referred to as "the Act") was issued by the Central Government for acquisition of the land for special railway purposes, Western Dedicated Front Corridor i.e. preservation, management and control for its utilization in the public interest, in District Palwal (Haryana). The petitioner filed objections u/s 20D of the Act and the Land Acquisition Collector vide his report dated 29.7.2011 (Annexure P-7) recommended as follow:-

After seeing the site alongwith DFCCIL Officer official under signed has observed that a lot of open agricultural land is available in the near by area (towards east southeast and south of land proposed for acquisition) and proposed track can be easily routed through such available land without disturbing said land Five Star Hotel Project, for which State Government has already granted CLU permissions and Constriction work is going on spot. Therefore by seeing the above mentioned facts and aforesaid site inspection objections accepted, proposed track can be changed towards East - Southeast of the said land. So, khasra No. 49 Killa No. 4, 5/1 & 6/2 i.e. (total Land) acquisition land may be released (sic) interest and for completion (sic) of Five Star Hotel Project in the newly developing area by the DFCCIL.

The petitioner received a notice dated 28.5.2013 u/s 20F of the Act for determination of the amount of compensation in respect of the land measuring 12 Kanal - 1 Maria comprised in Khasra No. 49, Killa No. 4 (6-17), 5/1 (4-6), 6/2 (0-18) situated in village Prithla, District Palwal. On receipt of this notice, the petitioner made inquiries and came to know that the respondents have issued yet another notification u/s 20A of the Act dated 15.7.2012 published in the Gazette of India on 20.7.2012 (Annexure P-9). Further notification dated 12.12.2012 u/s 20A of the Act declared the vesting of the acquired land with Central Government free from all encumbrances. The award was passed on 17.6.2013.

2. The acquired land belong to M/s. SPS Buildcom Limited. As per order dated 18.11.2011 passed in Company Petition No. 72/2011, all the business, properties, assets, liabilities etc. of M/s. SPS Buildcom Limited have been transferred with M/s. SRS Retreat Services Limited i.e. the petitioner.

3. It has been averred that the petitioner has obtained a CLU for the land including the acquired land to built a Five Star hotel by paying CLU charges and also obtained the other necessary permissions. The building plan has been got approved and the construction is in progress. The acquisition of the land measuring 12K-1M will be detrimental for the project. It will divide the land of the petitioner into two parts leaving no approach of the land to the southern land. Other vacant land adjoining the cite for Railway Corridor is available and can be easily acquired. Once the authorities have passed the order accepting the objections of the petitioner to release the land in question, it could not be acquired again. The notification for acquisition of the land of petitioner suffers from vice of arbitrariness and is unfair and unjust. The petitioners have sought quashing of the notification dated 15.7.2012 published on 20.7.2012 (Annexure P-9) and the award dated 17.6.2013 (Annexure P-11).

4. We have heard the counsel for the petitioner.

5. Learned counsel for the petitioner has referred to the building plan of their hotel project (Annexure P-4) and vehemently argued that the petitioners have obtained all type of required permissions for this project and the acquisition of their 12K-1M land will put their entire project into jeopardy.

6. After going through the contentions of the learned counsel for the petitioner, documents placed on file and on perusal of the site plan (Annexure P-4), we are of the considered opinion that there is no substance in the submission of the learned counsel for the petitioner. We say so because of the following reasons:--

i) The acquisition in this case is made for a public purpose of paramount importance and in national interest.

ii) The recommendations for release of the land of the petitioner have not been accepted by the competent authority. The recommendations were made by the

Land Acquisition Collector, who is not a technical expert and has submitted in his report that proposed track can be changed towards east-south east. It is for the Technical Experts to see as to where the railway track is to be laid and it is not so easy to infer that the alignment of the railway track can be changed like that of the road. The report of the competent authority i.e. the Land Acquisition Collector has not found favour with the experts and the matter of acquisition of the land of the petitioner was further processed.

iii) The land of the petitioner bearing Khasra No. 49 Killa No. 4, 5/1 & 6/2 is being acquired. The perusal of the site plan show that this part of the land in no manner affect the main building and other facilities being provided under the hotel project of the petitioner. The area of land bearing Khasra No. 49 Killa No. 4, 5/1 & 6/2 falls under the 9 Hole Golf Course, which is proposed on a vacant piece of land. The land of these khasra numbers is also beyond the alignment of the hotel land on southern side. The acquisition of this land, in no manner will affect the entire hotel project, except the shortening the space for the 9 Hole Golf Course. Even for the Golf Course, ample land will be available after acquisition of 12K-1M land.

iv) Here choice is in between the construction of a Golf Course and Railway Corridor, which is a project of utmost national project and it is the later which will get precedence in the larger interest of the society.

7. The learned counsel for the petitioner has placed reliance upon the judgment of this Court in Gian Chand and Others Vs. State of Haryana and Others, in support of his contention that the land once released from acquisition cannot be reacquired as there was no change in the circumstances. On perusal of the above citation, we find that the facts of the case in Gian Chand''s case (supra) are distinguishable from the facts of the present case. In that case 65 acre land of the petitioner was acquired and keeping in view the fact that the family of the petitioner consisted of 30 members, the State had released 22K-17Ms of their land for construction of their houses. The attempt was again made to acquire it. Observations in paras 10 & 11 of the judgment makes the facts of that case clear, which reads as follow:-

10. After hearing learned counsel for the parties and perusal of record with their able assistance, we are of the considered view that these three petitions deserve to be allowed. It is not disputed that total land of 60 acres belonging to the petitioners was acquired and a conscious decision was taken on 12.03.1986 for release of the land so as to enable the petitioners to construct their houses on these land. The aforesaid factual position is evident from a perusal of Para 2 of the letter which reads as under:

2. On this application, Govt. has decided to release the land which is left towards nala side after leaving the road so that landowners can use this for making houses on this land, as the whole land of these applicants has already been acquired. The situation of this land has temporarily shown with red line in the attached site plan.

11. Thereafter, the effort of the respondent-State to continue with the acquisition was also thwarted when the petitioners succeeded in persuading a Division Bench of this Court in declaring that the land measuring 22 kanals 17 marlas stood released in their favour (Annexure P5). The aforesaid order of the Division Bench notices the factual position that the entire land of the petitioners measuring 60 acres was acquired and 22 kanals and 17 marlas land was left out in order to enable the big family to construct their houses. Once the aforesaid factual position is clear, then it would be highly unequitable for the respondent to once again resort to acquiring the land of the petitioners. They have also built boundary wall and might have spend some expenditure over development of this land. The possession of the land continues to be with the petitioners albeit under the orders of this Court. In Roshan Lal''s case (supra), it has been observed that once the land has been released for raising construction of houses, then the principle of estoppel would be attracted as has been laid down by Hon''ble the Supreme Court in Ghaziabad Sheromani Sahkari Avas Samiti Ltd. and another etc. Vs. State of U.P. and others etc., . The petition was accordingly allowed.

Taking the stock of the facts and circumstances as mentioned above, we find no merits in the claim of the petitioner in this writ petition and the same is dismissed.