

Hari Ram and Others Vs Union Territory and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 12, 2011

Acts Referred: Constitution of India, 1950 " Article 14
Land Acquisition Act, 1894 " Section 4, 48, 6

Citation: (2011) 162 PLR 797 : (2011) 5 RCR(Civil) 606

Hon'ble Judges: Rakesh Kumar Garg, J; Jasbir Singh, J

Bench: Division Bench

Judgement

Jasbir Singh, J.

This order will dispose of three writ petitions, i.e., C.W. Ps. No. 3233 of 1993, 17931 of 2009 and 6897 of 2010. To

dictate order, facts are being taken from CWP No. 3233 of 1993.

2. The Petitioners have filed this writ petition with a prayer to quash notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894

(in short the Act) on January 31, 1992, and January 29, 1993, respectively to acquire a vast track of land including small plots of land measuring 2

to 3 Marias (10 Marias only in one case), owned by them.

3. It is not in dispute that the Petitioners belong to poor strata of the society and they have constructed their houses before issuance of the

notification u/s 4 of the Act, except Petitioner in CWP No. 17931 of 2009. It is stated by the Petitioners that when notification u/s 4 of the Act

was issued, land owned by about 800 people was also made part of it, wherein unauthorised colony was in existence. When notification u/s 6 of

the Act was issued, those houses were exempted from acquisition and unauthorised construction in that regard was regularised.

4. However, that relief was not given to them despite request made in that regard.

5. The Respondents have put on record a detailed site plan showing land owned by the Petitioners and the land, which was left out of acquisition

when notification u/s 6 of the Act was issued. Taking note of the same, following order was passed by this Court on November 30, 2010:

In CWP No. 17931 of 2009, following order was passed by this Court on July 26, 2010:

Counsel for the Respondents - U.T. Administration is directed to put on record the site plan showing detail of the land which was subject matter of

notifications under Sections 4 and 6 of the Land Acquisition Act, 1894. In the site plan, the released area be also shown distinctly. Reference be

also made to the house of the Petitioner in this writ petition. Counsel is also directed to state the position as to whether under the National

Rehabilitation Policy, Petitioner is to be rehabilitated or not. Needful be done before the next date of hearing. Adjourned to 21.9.2010.

6. In response thereto, copy of the site plan has been put on record, in which it is not disputed that a huge unauthorised colony consisting of about

800 houses was left out of acquisition. It is also shown in the site plan that most of the houses of the Petitioners also fall in one cluster. To deprive

them the same benefit, which was given to residents of an unauthorised colony, it is only said that leaving out their land would affect overall planning

of the area. Be that as it may, we are tentatively satisfied that the above said objection is not maintainable. The Petitioners' construction, on some

portion of the land, was there when notification u/s 4 of the Land Acquisition Act, 1894 was issued. We direct counsel for UT Chandigarh

Administration, to get instructions as to whether the authorities are ready to give to the Petitioners a plot of the same size of land, at some other

place in Mani Majra in lieu of land, owned by them, as shown in the site plan. On request, adjourned to December 20, 2010.

Thereafter, counsel for the Respondents stated that it is not possible to allot alternative sites to the Petitioners. Heard counsel for the parties.

7. Taking note of the facts on record, we are of the view that a grave discrimination has been done to the Petitioners. As per site plan put on

record, about 14 houses of the Petitioners fall in one cluster and that too on one side of the acquired area. One house is situated on the road and

another is situated next to the land already acquired. It is also apparent from the site plan that more than 800 houses, situated in an unauthorised

colony, were left out of acquisition, after issuance of notification u/s 4 of the Act. To show that the Petitioners have been treated discriminately,

following averments have been made in the writ petition:

15. Now on 21.1.1993, a notification u/s 6 of Land Acquisition Act has been issued which includes the houses of the Petitioners. A copy of this is

placed on record as Annexure P/3.

That all the houses approximately 800 in Shanti Nagar, Darshani Bagh etc., which had been regularised by Respondent No. 3, have been released

from this acquisition and they are excluded in Section 6 notification under Land Acquisition Act.

Areas released are shown in Green colour on the Map.

16. That number of houses in Pocket No. 7 have also been released because there were constructed houses on them. Others constructed houses

not fitting in the planning of the area (Pocket No. 7) were relocated by giving them alternative sites.

8. To the above averments, following reply was filed by the Respondents:

15. That para No. 15 of the writ petition is matter of record.

16. That the averments made in para No. 16 of the writ petition does not relate to the land in dispute and has no bearing on the facts/ decision of

the present case.

9. It is apparent from the records that the Petitioners, who are very poor persons and have constructed their houses on small pieces of land, have

been put to a loss, whereas benefit has been granted to many similarly situated persons. Such a discrimination is not permissible. Furthermore,

counsel for the Respondents have failed to show that release of Petitioners' land will hamper the overall development in the scheme.

10. Their Lordships of the Supreme Court, while dealing with a similar situation in the case of Hari Ram and Another Vs. State of Haryana and

Others, , observed as under:

It is true that any action or order contrary to law does not confer any right upon any person for similar treatment. It is equally true that a landowner

whose land has been acquired for public purpose by following the prescribed procedure cannot claim as a matter of right for release of his/her land

from acquisition but where the State Government exercises its power u/s 48 of the Act for withdrawal from acquisition in respect of a particular

land, the landowners who are similarly situated have right of similar treatment by the State Government. Equality of citizens' rights is one of the

fundamental pillars on which edifice of rule of law rests. All actions of the State have to be fair and for legitimate reasons. The Government has

obligation of acting with substantial fairness and consistency in considering the representations of the landowners for withdrawal from acquisition

whose lands have been acquired under the same acquisition proceedings. The State Government cannot pick and choose some landowners and

release their land from acquisition and deny the same benefit to other landowners by creating artificial distinction. Passing different orders in

exercise of its power u/s 48 of the Act in respect of persons similarly situated relating to same acquisition proceedings and for same public purpose

is definitely violative of Article 14 of the Constitution and must be held to be discriminatory.

11. Same is the situation in this case. Houses of about 800 persons, situated in an unauthorised colony, which was part of the acquisition, were

released from acquisition, whereas said relief was declined to the Petitioners by raising flimsy grounds. The land was ordered to be acquired way

back in the year 1992. The prices of land in Chandigarh are so high that if the Petitioners are dispossessed, it will not be possible for them to even

buy a few yards of land, what to talk of constructing houses thereon with the amount which they will receive for their small houses. A poor citizen

cannot be left without roof above his head. It is bounden duty of the State to provide shelter to all the citizens. In the name of development, they

cannot be uprooted and made to live their; life in unauthorised tenements.

12. An offer was given to the Respondents to rehabilitate the Petitioners.

13. However, the said offer was declined without any justification. Under the circumstances, acquisition qua the land of the Petitioners cannot be

sustained. However, by taking an over all view of the entire situation and also noting alternative prayer made by the Petitioner for allotment of

alternative place, we keep it open to the Respondents to rehabilitate the Petitioners by allotting them alternative plot of same size and compensation

for the superstructures, failing which, the acquisition of Petitioners' land shall stand quashed.

14. This writ petitions stand disposed of with above said observation.