

(2011) 163 PLR 498

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 12419 of 2010

Ratna Ram and Others

APPELLANT

Vs

State of Haryana and
Others

RESPONDENT

Date of Decision: March 9, 2011

Acts Referred:

Constitution of India, 1950 – Article 13#Land Acquisition Act, 1894 – Section 17, 4, 5A, 6, 9

Citation: (2011) 163 PLR 498

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

Bench: Division Bench

Final Decision: Allowed

Judgement

Jasbir Singh, J.

Petitioners who are 38 in number are the small land owners and their land measuring about 4 acres 1K-11M is the subject

matter of acquisition. They have filed this writ petition with a prayer to quash a notification issued u/s 4 read with Section 17 of the Land

Acquisition Act, 1894 (in short "the Act") on 26th May, 2009 proposing to acquire land owned by them, mentioned above, for a public purpose

namely "for construction of sewerage treatment plant" in Naraingarh. Further, challenge has been made to a declaration issued u/s 6 read with

Section 17 of the Act on 25.06.2009. Still further, a notice issued u/s 9 of the Act on 18.06.2010 is also under challenge.

2. When notice of motion was issued following contention of learned counsel for the petitioner was noticed by this Court on 16.07.2010.

Counsel for the petitioners states that notification, to acquire land of the petitioners, was issued on 26.05.2009 u/s 4 read with Section 17 of the

Land Acquisition Act, 1894(in short "the Act"). Declaration u/s 6 was issued on 25.06.2009. Possession of the land was not taken thereafter and

the petitioners are still in possession. They have received notice u/s 6 on 18.06.2010. Above said facts clearly indicate that the petitioners' right to

file objections u/s 5-A of the Act has unnecessarily been curtailed, whereas there was sufficient time with the authorities to give that opportunity to

the petitioners.

3. In response to the notice issued, reply has been filed by the respondents, wherein it has been stated that the land was proposed to be acquired

on account of a notice issued by the Haryana State Pollution Control Board to construct a sewerage treatment plant in Naraingarh and further the

delay in taking possession of the land had occurred on account of one or the other administrative reasons (Para No. 16 of reply filed by

respondent Nos. 1 and 3).

4. Heard learned counsel for the parties.

5. Counsel for the petitioners has vehemently contended that to oppose the acquisition of their land, only remedy available to the petitioners is to

file objections to the same u/s 5-A of the Act as per law, which remedy is akin to fundamental rights of a landowner. It was further contended that

the present acquisition is illegal, arbitrary and unconstitutional, as, the right of the landowners to file objections u/s 5-A was taken away arbitrarily,

as no such emergency has occurred for which 30 days' delay cannot be brooked which is required for filing the objections u/s 5-A of the Act.

Apart from this, the petitioners, to claim relief, relied upon the law laid down by the Hon'ble Supreme Court in Hindustan Petroleum Corporation

Ltd. Vs. Darius Shapur Chenai and Others, in which it was held that filing of the objections u/s 5-A of the Act and opportunity of hearing, thereof,

is a right akin to the fundamental rights of the landowner and that cannot be taken away arbitrarily by issuing a notification u/s 4 read with Section

17 of the Act, when in fact, it is not needed.

6. By making reference to the facts on record, counsel for the petitioners states that the proposed site of sewerage treatment plant is near to the

abadi of the town and further that a chunk of land owned by the Gram Panchayat which could have been acquired is lying vacant and situated next

to the land owned by the petitioners at a very small distance. He prayed that in view of the above, there was no reason with the authorities to

invoke the provisions of Section 17 of the Act and take away right of the petitioners to file objections u/s 5-A of the Act.

7. In response thereto, State counsel has argued that on account of the notice issued by the Haryana State Pollution Control Board, the land was

proposed to be acquired. Everything was done in a very prompt manner. The delay in taking possession of the land occurred on account of some

administrative reasons.

8. After hearing learned counsel for the parties we feel that there was no urgency with the respondents to invoke the provisions of Section 17. It

appears that there was a non application of mind to take away right of the landowners to file objections u/s 5-A of the Act. In response to

averments made by the petitioners, in reply filed on behalf of respondents No.1 to 3 in Para No.1 (preliminary objections) it has been stated as

under:

That the brief facts of the case are that there is urgent need of a Sewerage Treatment Plant in the area for ""Moving Bad Biological Reactor"", thus,

the matter being of urgent in nature as the Pollution Control Board is pressing hard to complete the construction of sewerage treatment plant at the

earliest, so that there is no outbreak of any disease. In this regard, the Haryana State Pollution Control Board, Panchkula has also issued a Show

Cause Notice dated 21.10.2008. A true copy of the same is annexed herewith as Annexure R-I. Thus, the matter was forwarded to the higher

authorities for necessary action. Resultantly, the Project for construction of Sewerage Treatment Plant in Naraingarh Town has already been

approved by the State Sanitary Board, Haryana vide Resolution No. 27, dated 04.09.2003 for an amount of Rs. 561.50 lakhs which includes

provision for laying of sewer and construction of Sewerage Treatment Plant. Out of this, an amount of Rs. 215.18 lakhs have been earmarked for

the construction of sewerage treatment plant and the Detail Project Report of same already stands approved from competent authority. In the

Sanitary Board meeting held on 04.06.2008 funds amounting to Rs. 100.00 lakhs have been allocated against the scheme for the construction of

Sewerage Treatment Plant. The work of construction of sewerage treatment plant has already been allotted vide Engineer-in-Chief, Haryana,

Public Health Engineering Department, Panchkula, memo No. 4170-71-PHED/UI dated 12.11.2009 and the work can only be started after the

clear possession of land.

9. The facts indicated by the respondents clearly show that notice to set up sewerage treatment plant was issued by the Pollution Control Board,

State of Haryana on 21.10.2008. Show cause notice for prosecution not to set up a sewerage treatment plant was issued by the Haryana State

Pollution Control Board, State of Haryana to Executive Engineer, Sanitary Department at Naraingarh. Reading of that notice clearly indicates that

the process to establish a sewerage treatment plant was in discussion even before the above said notice. After receipt of that notice the authorities

took more than 6 months to issue notification u/s 4 of the Act. Thereafter, declaration was issued on 25.06.2009. The authorities went in slumber

thereafter and issued notice under , Section 9 on 18.06.2010. No explanation has been given for this delay of more than a year except stating that

it was caused on account of one or the other administrative reasons. What were those reasons, are not coming out from the record. It is also not

coming out from the record as to whether any conscious decision was taken to dispense with filing of the objections u/s 5-A of the Act by the

landowners. It is clearly evident that there was no urgency of such a nature, to acquire the land so as to invoke the provisions of Section 17 of the

Act.

10. Very surprisingly, it is clear from a copy of an agreement/contract to construct the sewerage treatment plant, that this work was allotted to a

contractor in the month of November 2009 even before taking possession of the land. Such like situation has been deprecated by a Division

Bench of this Court in Rohtash and others v. State of Haryana and others in Civil Writ Petition No. 9065 of 2010, decided on 22.11.2010 and it

has been held that when there is no explanation for delay in completing the proceedings, initiated by invoking the provisions of Section 17 of the

Act, those cannot be upheld.

11. Recently, the Hon"ble Supreme Court of India in SLP (Civil) No. 8939 of 2010 titled as Dev Sharon and others v. State of U.P. and others

decided on 7th March, 2011, has also held that when there is a delay in completing the proceedings, right of the landowner to file objections u/s 5-

A of the Act, which is akin to a fundamental right cannot be taken away, casually. In that case, also, it was found as a matter of fact that no

explanation has been tendered by the authorities for a delay of 11 months and 23 days i.e. almost a year, which has taken place after issuance of

notification u/s 4 of the Act till the issuance of a notification u/s 6 of the Act. Their Lordships of Supreme Court in the above case voiced their

concern to help a common man as against the arbitrary actions of the authorities and for protection of their fundamental rights. Para No. 15, 17

and 18 of their judgment make an interesting reading, which are stated as" under:

Admittedly, the Land Acquisition Act, a pre-Constitutional legislation of colonial vintage is a drastic law, being expropriator in nature as it confers

on the State a power which affects person"s property right. Even though right to property is no longer fundamental and was never a natural right,

and is acquired on a concession by the State, it has to be accepted that without right to some property, other rights become illusory. This Court is

considering these questions, especially, in the context of some recent trends in land acquisition. This Court is of the opinion that the concept of

public purpose in land acquisition has to be viewed from an angle which is consistent with the concept of a welfare State.

In construing the concept of public purpose, the mandate of Article 13 of the Constitution that any pre-constitutional law cannot in any way take

away or abridge rights conferred under Part III must be kept in mind. By judicial interpretation the contents of these Part III rights are constantly

expanded. The meaning of public purpose in acquisition of land must be judged on the touchstone of this expanded view of Part-III rights. The

open-ended nature of our Constitution needs a harmonious reconciliation between various competing principles and the overhanging shadows of

socio-economic reality in this country.

Therefore, the concept of public purpose on this broad horizon must also be read into the provisions of emergency power u/s 17 with the

consequential dispensation of right of hearing u/s 5A of the said Act. The Courts must examine these questions very carefully when little Indians

lose their small property in the name of mindless acquisition at the instance of the State. If public purpose can be satisfied by not rendering common

man homeless and by exploring other avenues of acquisition, the Courts, before sanctioning an acquisition, must in exercise of its power of judicial

review, focus its attention on the concept of social and economic justice. While examining these questions of public importance, the Courts,

especially the Higher Courts, cannot afford to act as mere umpires.

12. In view of the facts mentioned above, in this case, we may have quashed the proceedings u/s 6 of the Act, if time was available with the

authorities to issue a fresh notification u/s 6 of the Act. after hearing objections to be filed by the petitioners. But in the present case, from the date

of issuance of notification u/s 4 i.e. on 26.05.2009 more than one year has elapsed when stay was granted by this Court on 16.07.2010.

13. In view of the facts mentioned above and as per ratio of the judgment of Supreme Court in SLP No. 8939 of 2010, this writ petition is

allowed. Notifications issued u/s 4 and 6 read with Section 17 and notice issued u/s 9 of the Act are quashed. However, the liberty shall remain

with the authorities to acquire the land as per law in accordance with the provisions of Land Acquisition Act, 1894.