

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP-7604-1994

Date of decision : 09.07.2015

Romesh Singh Solanki and others

... Petitioners

Versus

State of Haryana and another

... Respondents

***CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE REKHA MITTAL***

Present: Mr.Hemant Sarin, Advocate
for the petitioners.

Mr.Sudeep Mahajan, Addl.A.G.Haryana.

REKHA MITTAL, J.

Challenge in this petition filed under Article 226 of the Constitution of India is to the notification dated 21.03.1991 under Section 4 of the Land Acquisition Act 1894 (for brevity 'the Act') and declaration dated 18.03.1992 under Section 6 of the Act.

The petitioners claim that they own 6 kanals 6 marlas of agricultural land in village Hisar comprising various khasra numbers detailed in para 2 of the petition. On 21.03.1991, the respondent State issued notification under Section 4 of the Act for acquisition of land for development of residential Sector 16 and parts of Sectors 11, 13, 15 and 17 of Hisar by the Haryana Urban Development Authority (in short 'HUDA') (Annexure P1). The declaration under Section 6 of the Act was made on

18.03.1992 acquiring land measuring 428.91 acre including land of the petitioners. As per allegations, substance of the notification under Sections 4 & 6 of the Act was not published in the locality as envisaged by the provisions of Sections 4 & 6 respectively of the Act. It is further averred that land measuring 10 kanals 7 marlas belonging to M/s Amar Steel Rolling Mills and others has been released from acquisition vide letter dated 16.03.1994, the date on which the award was announced by the Land Acquisition Collector. Similarly, in 1993 land measuring 1650 square yards belonging to Mr.Jagdish Singh and others and land measuring 1300 square yards belonging to Mr.Baljeet Singh Nehra, Excise and Taxation Officer and brother-in-law of Mr.Joginder Singh, MLA was released from acquisition vide Annexures P7 and P8 respectively. The respondents have arbitrarily and discriminatorily released certain lands by adopting a pick and choose policy.

Counsel for the petitioners would contend that the petitions filed by some of the land owners whose land was acquired vide impugned notifications have been allowed by way of ***CWP-7605-1994 “Vishva Adhyatmik Sangh Coop. Group Housing Society Vs. State of Haryana and others”*** decided on 18.07.2011, ***CWP-3080-1994 “Kanshi Ram Vs. State of Haryana and others”*** decided on 24.05.2010, ***CWP-1608-1994 “Nand Lal Adib Vs. State of Haryana”*** decided on 21.04.2010 and ***CWP-3162-1995 “Mohini Devi Vs. State of Haryana”*** decided on 18.07.2011. It is further submitted that Letters Patent Appeal filed against the judgment in ***Vishva Adhyatmik Sangh Coop. Group Housing Society's*** case (supra) by the State of Haryana was dismissed by a Division Bench on 15.07.2013 in

LPA No.97 of 2013. Sh. Ram Pal Singh, Land Acquisition Collector, Urban Estate Department Haryana, Hisar filed his duly sworn affidavit dated 24.08.2011 in response to order dated 01.08.2011 passed by this Court wherein it has been conceded that vacant land of Rajender Kumar measuring 400 square yards, Jitender Kumar measuring 400 square yards and that of Smt. Sheela Devi measuring 800 square yards was released from acquisition vide memo dated 26.05.1994. It is argued with vehemence that refusal of the respondents to release land of the petitioners in the face of release of vacant land of various other land owners demonstrates that action of the authorities is discriminatory and the State has followed the policy of pick and choose for the reasons best known. It is further argued that there is no reason for the respondents to treat case of the petitioners differently and deprive them of their land which continues to be in their possession even after passing of the award way back in the year 1994. In support of his contention, he has placed reliance upon the Division Bench judgment of this Court in *Kanshi Ram's* case (supra) and in *Letters Patent Appeal No.97 of 2013 "State of Haryana and others Vs. Vishva Adhyatmic Sange Coop. Group Housing Society Ltd."*. Further reliance has been placed upon the judgment of Hon'ble the Supreme Court of India in *Hari Ram and another Vs. State of Haryana and others, (2010)3 Supreme Court Cases 621*.

Counsel for the State, Mr. Sudeep Mahajan, Addl. Advocate General Haryana would contend that release of land belonging to some other land owners does not create a right in favour of the petitioners to seek release of their acquired land.

We have heard counsel for the parties and perused the records.

Counsel for the State has not disputed release of land of various land owners when otherwise factum of release of land of M/s Amar Steel Rolling Mills, Rajender Kumar, Jitender Kumar, Sheela Devi and Arjun Dass has been affirmed in view of affidavit dated 24.08.2011 filed by Sh. Ram Pal Singh, Land Acquisition Collector, Hisar. In the case of Rajender Kumar, Jitender Kumar and Sheela Devi, the land was released after passing of award on 16.03.1994. The aforesaid persons did not file any objection under Section 5A of the Act and there was no construction on their land. Counsel for the respondents is not in position to draw a distinction between case of the petitioners and that of Rajender Kumar and others. It is not plea of the respondents that withdrawal from acquisition in favour of such land owners has been in violation of any statutory provision or contrary to law. It is also not their case that release of land in favour of such land owners was a wrong action on their part or it was done due to mistake or a result of fraud or corrupt motive. There is nothing on record suggestive of the fact that the persons whose land was released have derived the benefit illegally.

Keeping in view the various instances of release of land of land owners referred to in the affidavit of Ram Pal Singh, Land Acquisition Collector, Hisar and the decisions in various writ petitions allowed by this Court, in our considered opinion, acquisition of land of the petitioners can not be upheld as the petitioners have been treated discriminatorily without any valid explanation and justification.

For the reasons aforementioned, the petition is allowed and as a result, notifications dated 21.03.1991 and 18.03.1992 issued under Sections

4 & 6 of the Act are quashed qua land of the petitioners and the respondents are directed to release land of the petitioners from acquisition as has been done in the case of others. No order as to costs.

(REKHA MITTAL)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

July 09, 2015.

Davinder Kumar