

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP-10082-2011

Date of decision : 20.07.2015

Veena Chaudhary and others

... Petitioners

Versus

State of Haryana and others

... Respondents

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

Present: Mr.Arun Jain, Senior Advocate
with Mr.Amit Jain, Advocate
for the petitioners.

Ms.Palika Monga, DAG, Haryana.

Mr. Vinod S.Bhardwaj, Advocate
for respondents No.2 to 4.

REKHA MITTAL, J.

This order shall dispose of CWP No.10082 of 2011 'Veena Chaudhary and others Vs. State of Haryana and others', CWP No.1464 of 2013 'Thakarduwara Kanungoan Vs. State of Haryana and others' and CWP No.1478 of 2013 'M/s Balaji Overseas, Kaithal Vs. State of Haryana and others' as these have emerged out of the same acquisition under the Land Acquisition Act 1894 (in short 'the Act'). However, for sake of convenience, facts are taken from CWP No.10082 of 2011.

A proposal was made for developing a New Grain Market in the area of Kaithal. For the said purpose, after due deliberations, the Haryana State Agriculture Marketing Board (for brevity 'the Board') decided to utilise 61 acres 4 kanals 18 marlas of land belonging to Municipal

Council, Kaithal. Since there was deficiency of about 40 acres, the State of Haryana issued notification dated 29.01.2010 under Section 4 of the Act to acquire 32 acres 2 kanals 14 marlas of land out of land measuring 42 acres 5 kanals 9 marlas in respect of which certificates were obtained from the Collector. The land comprising khasra No.24 (8 kanals) and 25 (8 kanals) owned by the petitioners was acquired. The petitioners filed objections under Section 5-A of the Act on 23.04.2010 but the same were declined on merits as well as on the ground of limitation. Notification under Section 6 of the Act was issued on 27.01.2011 (Annexure P15).

CWP-10082 of 2011 & CWP-1464-2013

The primary contention raised by counsel for the petitioners is that land comprising khasra Nos. 24 and 25 is sandwiched between land comprising khasra No.18/2, 17, 16 on one side and killa No.3, 4, 5/1 and 5/2 on the other side. The land comprising khasra No.18/2, 17, 16 was not acquired as it belonged to influential persons whereas land comprising khasra Nos.3,4,5/1 and 5/2 belonging to Parkash Rice Mill has been released to a substantial extent in the year 2010. In addition, it is submitted that as land comprising khasra Nos. 18/2, 17 & 16 situated above land comprising khasra Nos.24 & 25 has not been acquired, the very purpose of giving rectangular shape to the area of Mandi would be defeated. It was urged that acquisition proceedings in respect of land of the petitioners are hit by discrimination and thus liable to be quashed. In regard to land belonging to Thakarduwara Kanungoan (CWP No.1464 of 2013), it was additionally submitted that the land belongs to a religious institution and therefore, it should not be subject to compulsory acquisition.

CWP-1478-2013

The sole submission made by counsel is that out of total land measuring 25 kanals 10 marlas of the petitioners, 17 kanals 2 marlas has been released whereas the entire land on which the rice mill has been installed is liable to be released for running the rice mill properly.

Counsel representing State of Haryana has urged that land comprising khasra Nos. 16, 17 and 18/2 was not subject matter of initial notification issued under Section 4 of the Act. The petitioners have failed to substantiate their plea that land falling in the aforesaid khasra numbers belongs to a person who could wield any influence. It is further submitted that even land comprising of these khasra numbers was proposed to be acquired and approval in this regard was given by the State Government on 17.12.2013 but the necessary notification could not be issued as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 came into force with effect from 01.01.2014. Sh.Dhanpat Singh, Additional Chief Secretary to Government Haryana, Agriculture Department has filed his affidavit dated 05.12.2014 in regard thereto. It is argued with vehemence that the petitioners have failed to substantiate their plea to challenge the acquisition proceedings on any count whatsoever.

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

The plea raised by the petitioners that acquisition proceedings are discriminatory in nature lacks merit and deserves outright rejection. There is nothing on record suggestive of the fact that land comprising khasra Nos. 16, 17 and 18/2 belongs to an influential person. The said land

was never proposed to be acquired in the notification issued under Section 4 of the Act. It is always within domain of the government to decide as to what land is required for accomplishment of a public purpose for which the land was proposed to be acquired. In this view of the matter, we are unable to agree with contention of the petitioners that the acquisition proceedings are hit by discrimination.

This apart, the Additional Chief Secretary, Haryana Agriculture Department filed duly sworn affidavit dated 05.12.2014 in compliance with the order passed by this Court on 08.07.2014. A relevant extract from para 8 of the affidavit reads thus:-

“That at this juncture, it becomes pertinent to point out that as the land falling in Khasra Nos.4, 5/1 and 1/1 has been released from the process of acquisition owing to the area being constructed, a need has been felt that the same would affect the entrance of the Mandi and a proposal to acquire land falling in Rectangle No.89, Khasra Nos.16, 17 and 18 has been approved by the State Govt. on 17.12.2013. The draft notification to the said effect has been prepared and sent to the Office of Legal Remembrancer, Haryana for vetting the same. However, on account of notification of the New Land Acquisition Act namely, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the Legal Remembrancer, Haryana vide U.O.No.5259-Leg.II (14) B/H/2013/297 dated 9.1.2014 returned the said notification citing that the new Land Acquisition Act of 2013 had come into force with effect from 1st January, 2014 and further acquisition, if any must be done as per the provisions of the new Act.”

A plain reading of the aforesaid extract makes it evident that a proposal was initiated to acquire land falling in rectangular No.89 khasra No.16, 17, & 18 and said proposal was actually approved by the State Government on 17.12.2013. Not only this, the draft notification in this regard was prepared and sent to the Legal Remembrancer, Haryana for vetting but the same was sent back by the Legal Remembrancer on account of the new law namely Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 having come into force with effect from 01.01.2014 and in those circumstances, the acquisition, if any, was required to be done as per provisions of the new Act. Assuming that the State Government ultimately decides to shelve the proposal to acquire land falling in khasra Nos.16, 17 & 18 for certain reasons, this fact is not sufficient to give a legal and valid challenge to acquisition of land of the petitioners.

The plea of M/s Thakarduwara Kanungoan that land belongs to a religious institution is no ground to set aside the acquisition proceedings undertaken for a public purpose of setting up a New Grain Market in Kaithal. It is not plea of the petitioners that land belonging to the religious institutions is exempted from acquisition under the Act. In this view of the matter, we do not find any merit in contentions of the petitioners in CWP-10082 of 2011 & CWP-1464-2013 that acquisition of their land is liable to be set aside.

With regard to plea of the petitioners in CWP No.1478 of 2013, the land earlier belonged to M/s Parkash Rice Mill. As per survey conducted before issuance of notification under Section 4 of the Act, the

said Rice Mill was not functional. The petitioner purchased the land vide sale deed dated 05/06.08.2010 after the acquisition process was initiated vide notification issued under Section 4 of the Act.

The Hon'ble Supreme Court of India in ***K.N. Aswathnarayana Setty(D) Tr.LRs. and others Vs. State of Karnataka and others, 2014(1) RCR (Civil) 533***, on a detailed consideration of various judgments referred to in para 9 has recorded its conclusion in the following words:-

“10. The law on the issue can be summarised to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor's title.”

In view of enunciation of law laid down by the Apex Court, the petitioner is not competent to challenge the acquisition proceedings on any ground whatsoever.

Admittedly, land measuring 17 kanals 2 marlas out of acquired land measuring 25 kanals 10 marlas has been released. It is mystified as to what weighed in the mind of the authorities to release substantial part of land of the rice mill despite admitted position that the rice mill was lying abandoned at the time of survey conducted prior to issue of notification under Section 4 of the Act and so also at the time of release of land. As there is no challenge to said release, we have refrained from examining the matter in detail. However, counsel for the petitioners is not in a position to substantiate his plea of further release particularly in the circumstances that

the authorities have already released much more area than under construction (1497.22 square yards) albeit the fact that the rice mill is non-functional.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the petitions are dismissed leaving the parties to bear their own costs.

(REKHA MITTAL)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

July 20, 2015.

Davinder Kumar