

IN THE PUNJAB & HARYANA HIGH COURT
AT CHANDIGARH

CWP No.23760 of 2013

Date of Decision: 30.11.2015

Jai Narain

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. Gurinder Pal Singh, Advocate,
for the petitioner.

Mr. Vishal Garg, Addl. AG, Haryana,
for respondent Nos.1 to 3.

Mr. Kamal Sehgal, Advocate,
for respondent No.4.

HEMANT GUPTA, J.

Challenge in the present writ petition is to the notifications dated 28.07.2010 and 03.08.2011 issued under Sections 4 & 6 of the Land Acquisition Act, 1894 (for short 'the Act') respectively.

The petitioner is owner of half share of land measuring 3½ acres situated within the revenue estate of Villages Kasan and Khoh, Tehsil and District Gurgaon. The land situated in Villages Kasan and Khoh was subject matter of acquisition for setting up an 'Industrial Model Township'. The land of the petitioner measuring 1 Kanal 11 Marla was not acquired, when the notifications were earlier issued on 24.11.2006 and again on 17.07.2008. It is, thereafter, the notification dated 28.07.2010 under Section 4 of the Act was issued to acquire land measuring 1 Acre 2 Kanal & 13 Marla including the land of the petitioner measuring 1 Kanal 11 Marla for planned development of an integrated complex for industrial, residential, recreational and other public

utilities etc. in Villages Khoh and Kasan, Tehsil and District Gurgaon. The petitioner filed objections as contemplated under Section 5A of the Act. The Land Acquisition Collector recommended that the land should not be acquired as residential house is in existence at the spot. However, the Financial Commissioner & Principal Secretary, Industries & Commerce, recorded a note on 25.07.2011 in respect of land of the petitioner forming part of Pocket E. The said note (Annexure P-10) reads as under:

“The Government had notified 1 Acre 2 Kanal 13 Marla land (left out pockets) of villages Khoh and Kasan for IMT Manesar vide notification dated 28.07.2010 issued under Section 4 of the Land Acquisition Act. The proposal is now for issue of Section-6 notification. The total land comprises of six different left out pockets marked as ‘A’, ‘B’, ‘C’, ‘D’, ‘E’ & ‘F’ on the shijra plan and the layout plan placed below. Objections have been filed under Section 5-A in respect of all the land parcels excepting the site marked as ‘F’ measuring 0K-10Marla. The Land Acquisition Collector has recommended release of all the five land parcels keeping in view that residential structures are existing at site.

2. I have discussed the shijra plan as well as the layout plan with the Addl. D.I. and the CTP/HSI IDC. A perusal of the layout plan shows that it should be possible to substantially accommodate/adjust the land marked as Pocket ‘A’ (excepting a small portion falling in the alignment of the circulation road, and the land under pocket ‘C’). It is extremely difficult to adjust the land falling in pocket ‘B’ as it is a stand-alone isolated structure and the land under pocket ‘E’ as a substantial portion thereof falls in the alignment of a 15-mtr wide circulation road.

3. Keeping in view the ground realities, we may have to negotiate with the landowners of pockets ‘B’, ‘E’ and ‘E’ by offering them alternate plots of the same size elsewhere. A decision on these adjustments would have to be taken only after issue of notification under Section-6. As such, it is proposed that the Government may issue notification under Section-6 in respect of all the land parcels at this stage. The HSI IDC would be advised to demarcate the exact land at site and discuss the possibilities of offer of alternate plots with these landowners within a period of next 2 -3 months.

Submitted for approval.”

It is the said note, which was approved firstly by the Industries & Commerce Minister and later by the Hon'ble Chief Minister. Thereafter, the notification under Section 6 of the Act was published in the Gazette Notification on 03.08.2011.

The petitioner challenged the acquisition of land on the ground that the notice under Section 9 of the Act has been issued on 06.08.2013 calling upon the petitioner to appear before the Land Acquisition Collector on 23.08.2013 i.e. beyond the period of two years from the publication of the notification under Section 6 of the Act. Thus, the acquisition proceedings stand lapsed on account of failure of the respondents to announce the Award within two years from the publication of declaration under Section 6 of the Act. The acquisition proceedings are also challenged on the ground that the petitioner has residential house on the land in question, therefore, in terms of the policy of the State Government dated 25.07.2007, such residential house should not be acquired.

During the course of arguments, learned counsel for the petitioner raised another argument that as much area as is required for the purpose of the road may be acquired, whereas the remaining land should be left out from acquisition, as is the adjoining land as per site plan Annexure R-1 filed with the additional affidavit is also the un-acquired or released land.

In the written statement dated 14.05.2014 filed on behalf of respondent No.1, it was averred that the land of the petitioner falls at Pocket 'E' and the portion of such land forms part of land required for 15 meters wide internal circulation road. It was also averred that notification under Section 6 of the Act was published in two daily newspapers i.e. Indian Express (English) and Rashtriya Sahara (Hindi) on 10.08.2011 and that Award in respect of such acquisition was announced on 28.03.2013. The said date is on account of

typographical mistake, as the correct date of Award is 23.08.2013. The relevant paras from the written statement read as under:

- “4. That it was observed at the time of issue of declaration under Section 6 of the Act that there were a total of six different and small pockets of land, marked from ‘A’ to ‘F’ on the layout plan, which inadvertently got left out from acquisition during the initial acquisition proceedings. The land of the petitioner was forming part of pocket ‘E’ marked on the layout plan. It was further observed that a small portion of this land pocket is situated in the alignment of a 15 meters wide internal circulation road. Accordingly, it was decided to include the land under pocket ‘E’ including the land of the petitioner in the Section 6 declaration. Simultaneously, the HSIIDC was also advised to demarcate the exact land at site and explore the possibilities of offer of alternate plots to these landowners, including the petitioner, vide letter dated 06.09.2011. The HSIIDC was also reminded from time to time to pursue a proposal for exchange of land with the landowners. Pursuant to the above, the HSIIDC made efforts to negotiate the exchange proposals with the landowners but without any success.
5. That the HSIIDC is the nodal agency of the State Government to develop industrial infrastructure in the State. Being the nodal agency, the HSIIDC prepares its plans for creation of the land bank and its subsequent development for meeting the requirement of industry and industrial growth. In selection of locations for development of industrial infrastructure, it is guided by the Development Plans notified by the Department of Town & Country Planning, and the demand for developed industrial space wherever the Development Plans are yet to be notified by the Town & Country Planning Department. In cases where the Development Plans have been notified, the area designated for Industrial a supporting subsidiary use, constitutes the location. Layout plan for development of industrial area earmarking roads, electricity, sewerage, industrial plots, integration of essential services etc. and connectivity of existing services is prepared by the HSIIDC.

xxx

xxx

10. That the HSIIDC is the nodal agency of the State Government to develop industrial infrastructure in the State and the subject land

was acquired by the State Government for complete integration and development of the said area to cater to industrial worker / labour housing in this area. The HSIIDC made efforts to settle land exchange proposals with the landowners, but could not succeed. The HSIIDC has informed vide its letter dated 02.04.2014 that the petitioner visited the office of Deputy General Manager (Industrial Area)/HSIIDC, Manesar, on 24.03.2014 and the matter regarding exchange of land was discussed with him. But the petitioner did not agree for exchange of land. The HSIIDC has also submitted its field office report dated 25.03.2014 alongwith letters dated 13.12.2013 and 24.03.2014 of the petitioner. It was stated that the field officers of the HSIIDC discussed the matter regarding exchange of land with the petitioner, but the petitioner did not agree to the same. A copy of the field report dated 25.03.2014 along with translated copies of letters dated 13.12.2013 and 24.03.2014 is annexed as Annexure R-2 (colly.) for kind perusal of this Hon'ble Court. A perusal of the letter dated 13.12.2013 would show that the petitioner made a request for the grant of time of 10 to 15 days to discuss the issue with his family members. Subsequently, the petitioner submitted letter dated 24.03.2014 to the DGM (IA)/HSIIDC, Manesar, stating that the Patwari requested him for selecting the land. The petitioner further stated in the said letter that he had raised residential construction on the subject land with an investment of about two crores and this Hon'ble Court has granted stay dispossession over the land in the instant CWP. The petitioner further stated that he would abide by decision of this Hon'ble Court in the matter. It may kindly be noted from the above that the petitioner is not agreeable to the proposal for exchange of land."

When the writ petition came up for hearing on 30.07.2015, a copy of the Award dated 23.08.2013 was placed on record. It was to find out, as to whether the Award was announced within the time prescribed. As per the Award, the proclamation in the locality was carried on 05.09.2011, therefore, the date of declaration under Section 6 of the Act is the last of the date on which the publication was carried out. Thus, the Award is within time

contemplated by Statute. The relevant extract from the Award dated 23.08.2013 reads as under:

“The Haryana Govt. Industries Department has notified the land of village Khoh Tehsil Manesar Distt. Gurgaon vide Notification No.32/5/2008-41B1 dated 28.07.2010 u/s 4 of the Land Acquisition Act, 1894 has been published and its declaration was notified vide No.32/5/2008-41B1 dated 03.08.2011 u/s 6 of Land Acquisition Act, 1894 (Act 1 of 1894) has been published. That the land is needed by the Govt. for a public purpose, at public expense, namely, for setting up of Industrial Model township, Manesar to be planned and developed as an integrated complex for industrial, residential, recreational and other public utilities etc. in village Khoh Tehsil Manesar, Distt. Gurgaon. The notification u/s 4 and 6 were duly published in 2 local newspapers and munadi was done in the village and rapat of munadi was entered in the roznamcha waqiyati of patwar halqa on 05.09.2011. Haryana Govt. Industries Department issued direction u/s 7 of the act for the acquisition of land vide notification No.32/5/2008-41B1 dated 14.02.2012 to the undersigned.”

The petitioner has not controverted the assertions made in the written statement or in the Award produced by the respondents.

Learned counsel for the petitioner has vehemently argued that the copy of the roznamcha waqiyati of patwar halqa dated 05.09.2011 has not been produced, as the copy of the same has not been supplied to the petitioner for the reason that the record is with the Central Bureau of Investigation. Therefore, in the absence of best evidence, it cannot be said that the proclamation in the locality was done on 05.09.2011. Thus, the Award is beyond the period of limitation prescribed under Section 11A of the Act.

In the written statement originally filed, the State Government has given the dates of publication of the notification under Section 6 of the Act in the Gazette as also in the newspapers. The dates of publication and the proclamation in the locality find mention in the Award specifically. It could not be disputed that the records of the acquisition are with the Central Bureau

of Investigation. Therefore, the assertion made in the Award that the proclamation was made in the locality on 05.09.2011 carries presumption of correctness, as the official acts are presumed to have been performed in due course. In the absence of any rebuttal to the proclamation having not made on 05.09.2011, we cannot permit the petitioner to dispute the publication of proclamation on 05.09.2011. Therefore, the Award is within the period prescribed by Statute.

The Land Acquisition Collector has recommended not to acquire the land of the petitioner, but the same was not accepted by the State Government as per the Noting reproduced above. A perusal of the site plan Annexure R-1 shows that substantial portion of the land of the petitioner falls within the road alignment. No doubt, the adjoining portion over which remaining land of the petitioner falls is close to the land, which is either released or un-acquired, but the fact remains that the major part of the land of the petitioner is under acquisition for development of 15 meter wide internal circulation road. The land in question is required for construction of the road. The Hon'ble Supreme Court in Sube Singh & others Vs. State of Haryana & others (2001) 7 SCC 545, has held that the land, which is required for construction of a road or hospital etc. can be acquired. In Jagdish Chand Vs. State of Haryana (2005) 10 SCC 162, the Hon'ble Court held that the direction to exempt structure from acquisition will not come in the way of authorities if required for the purpose of road and hospital and other civic amenities. It has been held:

“8. In view of what is stated above, we do not find any good reason as to why directions as given in the case of Sube Singh v. State of Haryana, (2001) 7 SCC 545 should not be given in these cases as well, subject to certain restrictions to take care of the planned development of the area. Accordingly, the impugned judgments are set aside and the appeals are allowed in the following terms:

1. The Secretary, Urban Estates Department, State of Haryana is directed to consider the objections of the appellants only so far it relates to exclusion of the land to the extent occupied by the structure and appropriate open area around the structure for the beneficial enjoyment of the appellants. However, this direction shall not come in the way of the authorities in removing the structures, if required for the purposes of road, hospital and other civic amenities.
 2. The Secretary, Urban Estates Department shall decide not only the existence of the structures prior to Section 4(1) notification or subsequent to, he shall also decide the extent of structure which existed prior to Section 4(1) notification.
 3. It is also open to the authorities to make adjustment or readjustment of plots for the purpose of planned development and in case it becomes necessary to give a little additional area from the plots to the appellants, the appellants shall be bound to take that additional area and also be bound to pay cost of such area as is chargeable to other allottees. The appellants shall also be bound to pay the developmental charges as is charged from other allottees. It is open to the parties to place documents or material in support of their contentions.
9. We expect that as far as possible, the respondents shall try to retain the structures, unless it becomes difficult for them to have a planned development without removing them in view of what is stated above.”

The impugned notifications of acquisition of land are in respect of very small portion of land measuring 1 Acre 2 Kanal & 13 Marla including 1 kanal 11 marlas land of the petitioner. The purpose of the acquisition is to acquire scattered small portions to facilitate integrated development of the large area of over 160 acres.

The State Government has decided to allot alternative land to the petitioner in lieu of land, which is now subject matter of acquisition. However, as averred in para 10 of the written statement, as reproduced above, the petitioner did not agree for exchange of land. Such assertion of the respondents in the written statement dated 14.05.2014 has gone un-rebutted for

almost for a period of 1½ years. We find that though the petitioner might not have accepted alternative land at an earlier point of time, but it will not absolve the respondents to allot alternative land.

In view of the above, we do not find any merit in the present writ petition in respect of acquisition of land required for laying of road, but as per the stand of the respondents that land-owners will be entitled to equivalent area of land, the present writ petition is disposed of with the direction to the respondents to allot alternative land to the petitioner in accordance with law.

(HEMANT GUPTA)
JUDGE

30.11.2015
Vimal

(RAJ RAHUL GARG)
JUDGE