

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.27319 of 2013

Date of decision: October 20, 2015.

Sudarshan Kumar Wadhwa and another

... **Petitioners**

v.

State of Haryana and others

... **Respondents**

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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

Present: Shri Manoj Kumar Sood, Advocate, for the petitioners.
Ms. Palika Monga, Deputy Advocate General, Haryana.

Hemant Gupta, J. (oral)

Challenge in the present writ petition is to the notification dated 14.8.2008 published under Section 4 read with Section 17 of the Land Acquisition Act, 1895 (hereinafter mentioned as the Act), followed by a notification dated 30.8.2008 issued under Section 6 of the Act.

Vide the notification under Section 4 of the Act, the land comprised in khasra No.1826/min, measuring 3 bigha 10 biswas was intended to be acquired whereas the total area mentioned in the notification for the purpose of acquisition was 21.28 acres.

Subsequently, notification under Section 6 of the Act was issued in respect of the entire land measuring 3 bigha 10 biswas in khasra No.1826. It was vide notification dated 26.8.2010 that land measuring 17.06 acres was released from acquisition under Section 48 of the Act.

Thereafter, an award was announced by the Land Acquisition Collector in respect of the land measuring 4.22 acres on 27.8.2010. The possession was delivered to the representative of the Estate Officer, Haryana Urban Development Authority, Faridabad vide rapat roznamcha No.759 dated 27.8.2010 but said rapat roznamcha is in respect of land measuring 4.75 acres. The different parcels of khasra No.1826 were mentioned therein, i.e., 6 biswas, 5 biswas, 19 biswas, 03 biswas and 4 biswas of which the possession was handed over to the Estate Officer. Still further, another rapat roznamcha was entered on 7.1.2013 to take possession of land measuring 4.22 acres on the ground that extra khasra numbers have been mentioned in the rapat roznamcha dated 27.8.2010 in respect of land measuring 4.75 acres.

An affidavit dated 24.9.2015 has been filed by the Land Acquisition Collector. It is pointed out that the total of the land notified under Section 4 of the Act sought to be acquired was 21.81 acres whereas the land which was released from acquisition was 17.06 acres under Section 48 of the Act. Therefore, the land which was acquired was 4.75 acres. It is explained that an area of 4.22 acres was mentioned in the award by mistake whereas the correct area is 4.75 acres. It was on account of typographical error that incorrect total of land was mentioned. The compensation of 4.75 acres has been deposited as per the details of area given in the award statement as mentioned in the Award. The mistake has been crept in the award and the rapat roznamcha. It has been also explained that khasra No.1826/min measuring 3 bigha 10 biswas as mentioned in the notification published under Sections 4 & 6 of the Act whereas the land which has been released from khasra No.1826/min, measures 1 bigha 6 biswas as per tatima.

Therefore, the remaining land measuring 2 bigha 4 biswas, which is falling in the alignment of the road stands acquired for road construction. It is also pointed out that since there is a mistake in rapat rozamcha dated 7.1.2013, the same stands withdrawn.

Learned Counsel for the petitioners has argued that the petitioner was not served with any notice under Section 9 of the Act in respect of the land which is sought to be taken possession of. It is also argued that the notification under Section 48 of the Act mentioned 1 bigha 6 biswas of the land as having been released from acquisition, which includes the land of the petitioner; therefore, the possession cannot be taken by the respondents.

From the perusal of the affidavit filed by the Land Acquisition Collector dated 24.9.2015, it transpires that the land intended to be acquired was 21.81 acres and not 21.28 acres. It is the mistake in the total of the land and not in any of the khasra numbers or the area, which was intended to be acquired. Such is the notification under Section 6 of the Act as well. Out of the said land, 17.06 acres was released from acquisition vide notification published under Section 48 of the Act. Such notification was issued even before the award was announced on 27.8.2010. The notification under Section 48 can be issued only after the vesting of the land with the State but the question is that how much land form part of the Award announced, which land would vest with the State.

The notifications under Section 4 & 6 of the Act are in respect of 3 Bighas 10 biswas of land comprising in khasra No.1826/min. Thereafter, land measuring 1 Bigha 6 biswas was released from land but such release is ineffective as the power to release land could be exercised

after vesting of land with the State. Therefore, the land, in respect of which Award has been announced alone, would vest with the State. In the Award, the land acquired is said to be 4.22 acres but from the Award statement of landowners as mentioned in the Award itself, it transpires that the compensation was deposited in respect of land measuring 4.75 acres. It includes the land of the petitioners. Though the power to correct mistake in the award could be exercised by the Collector within 6 months but the irregularity in the Award cannot be made basis to non suit the State on account of purely clerical error. Therefore, in writ jurisdiction, we are not inclined to set aside the acquisition proceedings only for the said mistake. The land stands utilized for the purpose of road. The technicalities cannot be permitted to defeat public interest. Therefore, we do not find any reason to interfere in the writ jurisdiction of this Court.

Dismissed.

[Hemant Gupta]
Judge

[Raj Rahul Garg]
Judge

October 20, 2015.
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