

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 4516 of 2014 (O&M)

Date of Order: September 10, 2015

M/s Vardaraj Buildcon Pvt. Ltd. and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

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

Present: Shri Aashish Chopra, Advocate, for the petitioners.

Ms. Palika Monga, DAG, Haryana,
for respondent Nos. 1 and 3.

None for respondent No.2.

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

Hemant Gupta, J.

Challenge in the present writ petition is to the notifications dated 6.1.2006 and 9.8.2006 published under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short `the Act'), on account of operation of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 Act (for short `the 2013 Act').

The petitioners claim to be owners in possession of the land said to have been purchased by them vide separate sale deeds on different dates i.e. petitioner No.1 on 1.3.2006; 3.3.2006; 7.3.2006 and 9.5.2006; petitioner No.2 on 26.6.2006 and petitioner No.3 on 23.8.2005; 21.10.2005 and 9.5.2006. Thus, all the sale deeds are after the publication of the notification under Section 4 of the Act.

After the declaration under Section 6 of the Act, the award was announced by the Land Acquisition Collector on 7.12.2006. The purpose of acquisition is development and utilization of the land for residential and commercial sectors adjoining the proposed 60 metres road at Rewari. The petitioners submitted a representation for release of the land in the year 2013, which was not accepted, therefore, the petitioners invoked the writ jurisdiction of this Court.

In the written statement, the respondents have justified the acquisition proceedings pointing out that the licence of land measuring 136.269 acres has been granted to the petitioners and the constructed area of 118.6 acres of land of the petitioners has been released after objections under Section 5-A of the Act. The Land Acquisition Collector, announced the award of the land measuring 299.46 acres. It is further pointed out that in the light of the provisions contained in Section 24(2) of the 2013 Act, the payment of compensation is required to be made to the majority of the land holdings and not to each of the land owners. It is further pleaded that the possession has been handed over to the HUDA vide Rapat Roznamcha No. 703 on 4.8.2006, but the amount of compensation has not been deposited in the Reference Court as the owners have not communicated their intent to the Land Acquisition Collector to receive the same.

However, during the course of hearing, the learned counsel for the respondents has raised a preliminary objection that the petitioners are purchasers of the land after publication of the notification under Section 4 of the Act and thus, the petitioners cannot dispute the acquisition proceedings and they cannot claim benefit of Section 24(2) of the 2013 Act. Reference is made to the Division Bench judgments of this Court in M/s National Packing

Industries v. State of Haryana and others, CWP No. 2304 of 2014 decided on 8.8.2014; Rajiv Kumar v. State of Haryana and others, CWP No. 20840 of 2014 decided on 18.8.2015.

On the other hand, learned counsel for the petitioners has relied upon Smt. Kamla Devi and others v. State of Haryana and others, CWP No. 3654 of 2006 decided on 19.11.2014 and Logical Developers Pvt. Ltd. and others v. State of Haryana and others, CWP No. 5527 of 2013 decided on 31.3.2015. Reliance is also placed upon the judgment of the Hon'ble Supreme Court in Union of India v. Shivraj and others, (2014)6 SCC 564; Division Bench judgments of the Delhi High Court in Ranjana Bhatia v. Govt. (NCT of Delhi), (2014) 215 DLT 137; M/s I.S. Dye Stuff Industries v. Union of India and others, WP(C) 8798/2014 decided on 9.2.2015 and M/s Aasakti Estates Pvt. Ltd. v. Union of India and others, WP(C) 6617/2014 decided on 6.4.2015.

We have heard learned counsel for the parties and find that the petitioners cannot be permitted to dispute the acquisition proceedings including the claim under Section 24 of the 2013 Act in view of the fact that the petitioners are purchasers of the land after publication of the notification under Section 4 of the Act. The Hon'ble Supreme Court has in numerous judgments, also examined the right of the purchaser of the land to dispute the acquisition proceedings.

In Sneh Prabha v. State of U.P., (1996)7 SCC 426, the Hon'ble Supreme Court declined to grant benefit of rehabilitation, when the Court held to the following effect:-

“5. Though at the first blush, we were inclined to agree with the appellant but on deeper probe, we find that the appellant is not entitled to the benefit of the Land Policy. It is settled law that any person who purchases land after publication of the notification

under Section 4, does so at his/her own peril. The object of publication of the notification under Section 4 is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings points out an impediment to anyone to encumber the land acquired there-under. It authorizes the designated officer to enter upon the land to do preliminaries etc. Therefore, any alienation of land after the publication of the notification under Section 4 does not bind the Government or the beneficiary under the acquisition. On taking possession of the land, all rights, titles and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances and thereby absolute title in the land is acquired thereunder. If any subsequent purchaser acquires land, his/her only right would be subject to the provisions of the Act and/or to receive compensation for the land. In a recent judgment, this Court in Union of India vs. Shri Shivkumar Bhargava & Ors. [JT 1995 (6) SC 274] considered the controversy and held that a person who purchases land subsequent to the notification is not entitled to alternative site. It is seen that the Land Policy expressly conferred that right only on that person whose land was acquired. In other words, the person must be the owner of the land on the date on which notification under Section 4 was published. By necessary implication, the subsequent purchaser was elbowed out from the policy and became disentitled to the benefit of the Land Policy.”

In Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others, (2013)5 SCC 427, the acquisition proceedings were challenged by the Society after purchase of the land, after publication of the notification under Section 4 of the Act. The Court held to the following effect:-

“13. There can be no quarrel with respect to the settled legal proposition that a purchaser, subsequent to the issuance of a Section 4 Notification in respect of the land, cannot challenge the acquisition

proceedings, and can only claim compensation as the sale transaction in such a situation is Void qua the Government. Any such encumbrance created by the owner, or any transfer of the land in question, that is made after the issuance of such a notification, would be deemed to be void and would not be binding on the Government. (*Vide: Gian Chand v. Gopala & Ors.*, (1995) 2 SCC 528; *Yadu Nandan Garg v. State of Rajasthan & Ors.*, AIR 1996 SC 520; *Jaipur Development Authority v. Mahavir Housing Coop. Society, Jaipur & Ors.* (1996) 11 SCC 229; *Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain & Ors.*, (1997) 1 SCC 35; *Meera Sahni v. Lieutenant Governor of Delhi & Ors.*, (2008) 9 SCC 177; *Har Narain (Dead) by Lrs. v. Mam Chand (Dead) by LRs. & Ors.*, (2010) 13 SCC 128; and *V. Chandrasekaran & Anr. v. The Administrative Officer & Ors.*, JT 2012 (9) SC 260).

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20. The respondent society has placed reliance upon various policies of the Government, which allowed the exemption of land upon which construction existed on the date of issuance of Section 4 Notification. In the instant case, the respondent society entered into an agreement to sell, subsequent to the issuance of the Section 4 Notification, and therefore, the question of the existence of any construction on the said land by any of its members on the date of Section 4 Notification does not arise. The aforesaid policy decision therefore, must be implemented, while strictly adhering to the terms incorporated therein, as has been held by this Court in *Bondu Ramaswamy & Ors. v. Bangalore Development Authority & Ors.*, (2010) 7 SCC 129. In the said case, this Court examined the issue of discrimination with respect to releasing land belonging to one set of interested persons, while rejecting the release of land belonging to other similarly situated persons, whose land was situated in close vicinity to the land released.”

We have heard learned counsel for the parties and find that the petitioners, who are the purchasers of land after publication

of the notification under Section 4 of the Act are not the land owners for whose benefits the provisions of Section 24(2) of the 2013 Act, have been enacted. The petitioners have purchased the land for the purposes of setting up of a colony. More than 11 acres of land purchased by the petitioners has been released from acquisition and a licence for the land measuring 136.269 acres has also been granted. The petitioners have purchased the land with their eyes wide open that the land is subject matter of acquisition. They have taken a calculated risk. The petitioners have not disputed the acquisition proceedings for 7 years after the award was announced. The provisions of the 2013 Act are for the benefit of the land owners, whose land has not been put to use for a period of 5 years after the announcing of award. The petitioners, the purchasers of the land are not the tillers of land but has purchased property only with a view to develop colony for their profit motive.

In the light of the judgments of the Hon'ble Supreme Court in Sneh Prabha's case (supra) and Rajasthan State Industrial Development and Investment Corporation's case (supra), we find that the petitioners have no right to dispute the acquisition proceedings even under Section 24(2) of the 2013 Act. The petitioners can only claim compensation for the acquired land.

In Shivraj's case (supra), the issue as to whether the purchaser has a right to dispute the claim of benefit under Section 24(2) of 2013 Act, was not specifically raised or decided. However, in Civil Appeal No. 4374 of 2009 (Union of India v. Geeta Devi), the subsequent purchaser was granted benefit of non consideration of the objections filed by the original land owner under Section 5A of the Act. Since such issue has not been examined, we do not find that such judgment provides any assistance to the petitioners.

However, a Division Bench of this Court judgment in M/s National Packing Industries' case (supra), has considered the provisions of Section 24 of the 2013 Act and negated the benefit of such provisions to the petitioner therein. The Division Bench held to the following effect:-

“13. The petitioner who got executed the Lease Deed after issuance of Section 4 notification and the so-called Sale Deed in the year 1995 much after passing the Award, thus, has no locus-standi to question the acquisition proceedings much less to claim the benefit under 2013 Act. No fresh cause of action has accrued to the petitioner on coming into force of the 2013 Act. No person can be permitted to circumvent the law in the manner suggested by the petitioner by trying to invoke misplaced sympathy.

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15. The argument of learned Senior counsel for the petitioner that in view of the 2013 Act, the acquisition is deemed to have lapsed because the petitioners continued to be in possession of the demised land is not tenable in the facts and circumstances of the case. The provisions of the beneficial legislation cannot be permitted to be misused to the undue advantage of a person, who managed to hold on to the acquired land without any right whatsoever for all these years. It would amount to giving a premium on a wrong doing, which cannot be permitted.”

In Rajiv Kumar's case (supra), this Division Bench dismissed the writ petition filed by the subsequent purchaser after considering the judgment in Smt. Kamla Devi's case (supra) as well the judgment in M/s I.S. Dye Stuff Industries' case (supra). Still further, the judgments in Ranjana Bhatia's case (supra) and M/s Aasakti Estates Pvt. Ltd's case (supra), are on the similar lines. In Sunita Sahrawat and others v. State of Haryana, CWP No. 6652 of 2014 decided on 29.5.2015 an argument was raised to grant benefit

of Section 24(2) of the 2013 Act to the purchasers, but such question was not decided, which is evident from a reading of para No. 50 of the order.

In view of the above, we find that the petitioners being the colonizers and subsequent purchasers are not entitled to the benefit of Section 24(2) of the Act. Consequently, the present writ petition is dismissed.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

September 10, 2015
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