

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.26794 of 2014 (O&M)

Date of Decision: 07.11.2016

Tek Chand Jindal & Ors.

... Petitioners

VS.

State of Haryana & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

1. Whether Speaking?

Yes

2. Whether Reportable?

Yes

3. Whether Reporters of local papers may be allowed to see the judgment?

Yes

4. To be referred to the Reporters or not?

Yes

5. Whether the judgment should be reported in the Digest?

Yes / No

Present: Mr. Vikram Singh, Advocate for the petitioners

Ms. Palika Monga, DAG Haryana

SURYA KANT, J.

(1) The petitioners seek quashing of the notifications dated 08.02.1989 and 07.02.1990 issued under Section 4&6 of the Land Acquisition Act, 1894, the award dated 19.03.2012 as well as memo dated 02.11.2012 to the extent it pertains to acquisition of the land measuring 1 kanal 3 marla i.e. 636 sq.yards comprising Khasra No.8293/2/1/1 situated within the revenue estate of village Kasba Karnal.

(2) The petitioners chose to purchase the above-described piece of land vide a sale deed dated 10.10.1991, namely, much after the publication of notifications under Sections 4&6 of the Act vide which more than 314 acres land was decided to be acquired for its development as Residential and Commercial Area by Haryana Urban Development Authority, namely, Sector 4&5, Urban Estate, Karnal.

(3) It appears that soon after the publication of Section 6 notification various writ petitions were filed in this Court challenging the

where the landowners had raised some constructions, were disposed of on 21.03.2011 enabling them to approach the authorities, who, in turn, were directed to consider their claim and take an appropriate decision which would not interfere with the original Development Scheme.

(4) There was yet another batch of writ petitions including CWP No.4542 of 1990 (M/s Mann Cold Storage and others vs. State of Haryana and others) where there was challenge to the acquisition on merits but a Division Bench of this Court on 07.10.2010 (P4 colly) rejected all their contentions except that the petitioners who had not filed objections were permitted to submit the same under Section 5-A of the Act. Since there was stay against dispossession in these writ petitions, that the authorities could pass the award on 19.03.2012 only.

(5) The petitioners or their vendors did not file any such writ petition. It was on 19.03.2012 (P5) only that the petitioners submitted their objection-cum-claim petition under Section 9 of the Act alleging that they had constructed a house over the site which was demolished by HUDA authorities on 03.12.2004 hence *“the market value of the property @ Rs.30,000 per sq.yard may be awarded to the undersigned alongwith the costs of construction as mentioned above”*.

(6) It appears that separate objections claimed to be under Section 5-A, were also filed on 09.05.2012 but the same were rejected by the Director, Urban Estate Haryana vide memo dated 02.11.2012 (P8). The petitioners statedly thereafter filed an ‘appeal/representation’ on 10.07.2013 (P11) and since no decision was taken thereupon that the instant writ petition has been filed.

(7) The Additional Director, Urban Estate, Haryana in his written statement has taken preliminary objection of (i) inordinate delay and laches; (ii) *locus standi* of the petitioners; (iii) maintainability of the writ petition as the award has already been passed. On merits, it is explained that the piece of land of the petitioners “falls within 100 meters green belt along the bypass, Karnal”.

(8) As regard to the petitioners’ claim that a house was constructed before section 4 notification, the respondents have taken the following stand in their written statement:-

“...However, in the present case, neither was the petitioner owner of land as on 08.02.1989 when notification under Section 4 of the Act was issued, as admittedly, the land was purchased only on 10.10.1991 nor was the construction prior to Section 4 notification. Thus, the policy has no applicability to the present case. The petitioners have no locus standi to file the present petition.”

(emphasis applied)

(9) In support of the petitioners’ claim, their learned counsel vehemently contended that since there existed construction before Section 4 notification (which has been later on demolished by HUDA), the claim of the petitioners squarely falls within the four corners of Government policy dated 24.01.2011 (P12) for the release of such property.

(10) He contended that the action of the authorities is wholly discriminatory as various properties shown in the Plan (P6) have been released but such a benefit is being denied to the similarly-placed

petitioners. It is further contended that house of Lala Khushi Ram Gupta Charitable Society which is located very close to the petitioners' property has since been released.

(11) Learned State counsel, on the other hand, urged that the petitioners have no *locus standi* to question the acquisition as they admittedly purchased the property after publication of Section 4&6 notifications. They did not file objections under Section 5-A of the Act. She further explained that the petitioners were not the owners of the property before Section 4 notification hence their plea that any structure existed prior thereto or it deserves to be released in terms of Government policy, is totally false and contrary to record. He further contended that the writ petition suffers from the inordinate delay and laches as it has been filed after more than 23 years of the acquisition. According to learned State counsel, the petitioners cannot draw benefit out of the delay in passing the award, for it is not attributable to the authorities. He explained that in some of the writ petitions filed in the year 1990 dispossession as well as further proceedings were stayed due to which the Award could not be passed. He contended that the date of Award in any case, does not give rise to a fresh cause of action.

(12) Having heard learned counsel for the parties at a considerable length and after going through the record, we are satisfied that the instant writ petition is totally frivolous and is liable to be dismissed. We say so for the reasons that firstly the petitioner's foremost plea is based upon Government policy of 2011 (first policy in 2007) whereunder the construction found in existence in survey conducted before issue of Section 4 notification can be exempted. The petitioners were neither the owners of the subject-property before publication of Section 4 notification nor there is

any proof of the construction raised at the site prior thereto. Secondly, the jamabandi for the year 1999-2000 (P1) suggests that the land in question is “irrigatable agriculture land” and there is no *gair mumkin* house as alleged to have been demolished by HUDA in 2004. The very foundation of claim is thus baseless and contrary to record.

(13) Thirdly, the petitioners or their vendor never challenged the acquisition. The liberty granted by this Court to some of the writ petitioners to file objections under Section 5-A therefore cannot be encashed by them. As a matter of fact, the petitioners were in March, 2012 interested in the compensation of the acquired land, instead of seeking the release of it. Their afterthought and half-hearted plea which sans any legal foundation thus deserves to be rejected.

(14) Fourthly, the petitioners are not the *bona fide* landowners affected by the acquisition. They indulged in speculative gains by purchasing a property which stood finally notified for acquisition. They stepped into the shoes of their vendor at a stage when doors to file objections under Section 5-A had been closed. The only right available to them was to submit objections under Section 9 of the Act which, they indeed availed and sought compensation @ Rs.30000 per sq.yard. They cannot be permitted to blow hot and cold together, and to agitate that the acquisition is bad in law.

(15) Fifthly, the sale deed on which the entire claim of the petitioners rests upon, was admittedly got executed subsequent to the notification under Section 6 of the Act, hence it *ex facie* lacks legal sanctity as held by the Hon’ble Supreme Court in **Meera Sahni vs. Union of India & Ors., (2008) 9 SCC 177.**

(16) For the reasons afore-stated, there is no merit in this writ petition which is dismissed with cost of ₹10,000/- to be deposited in the High Court Lawyers' Welfare Fund within a period of one month from the date of receipt of certified copy of this order.

(Surya Kant)
Judge

07.11.2016
vishal shonkar

(Sudip Ahluwalia)
Judge