

2024:PHHC:130288-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) CWP-2839-1996 (O&M)
M/s Geeta Spinning Mills (P) Ltd.Petitioner (s)
Versus
State of Haryana & anotherRespondent(s)

(2) CWP-2840-1996 (O&M)
M/s Globe Engineering Works GT Road Panipat & others
...Petitioner (s)
Versus
State of Haryana & anotherRespondent(s)

Reserved on: 26.09.2024
Pronounced on: 14.10.2024

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA

Present: Mr.Kanwaljit Singh, Sr.Advocate
with Mr.K.S.Brar, Advocate,
for the petitioner in CWP-2839-1996.

Mr.P.K.Mutneja, Sr.Advocate
with Mr.Akshay Goel, Advocate,
for the petitioner in CWP-2840-1996.

Mr.Ankur Mittal, Addl.A.G., Haryana
Mr.Saurabh Mago, DAG, Haryana.

G.S. Sandhawalia, J. :

1. The present judgment shall dispose of 2 writ petitions bearing
CWP-2839 & 2840-1996 since the notification in question and the

averments, as such, are same and therefore, the question in controversy is identical.

2. The acquisition proceedings were initiated on 02.03.1993 (Annexure P-4) by issuance of the notification under Section 4 of the Land Acquisition Act, 1894 (for short, the 'Act') for the public purpose of development and utilization of the land as residential, commercial and institutional area for Sector 18, Panipat, by the then Haryana Urban Development Authority Act, 1977, for the land falling in Villages Patti Magdum Jadgan, Hadbast No.9, Faridpur, Hadbast No.17, Sarai Bachha, Hadbast No.4, Ajizullapur, Hadbast No.5, Nijampur, Hadbast No.3 and Patti Insar, Hadbast No.12, Tehsil & District Panipat. The issue in dispute in the present case pertains to Village Nizampur/Nijampur for which 137.59 acres of land was sought to be acquired.

3. Section 6 notification dated 01.03.1994 (Annexure P-6) finalized the quantum of land which was to be acquired for all the villages including Nizampur and resultantly, approximately 6 acres of land was left out from the said village with the final acquisition being of 131.62 acres. The petitioners are also the beneficiaries of the said release which they have conveniently sought not to mention in the writ petition at the time of filing and when they got the status quo order way-back on 24.02.1996. The award was, thereafter, passed on 28.02.1996 and possession was taken of the other lands vide Rapat No.209 and apparently a sum of Rs.19,29,18,257/- was deposited out of which, Rs.18,41,89,440/- was disbursed to the landowners.

Pleadings in CWP-2839-1996

4. The case of the petitioner in the present case is that it is owner in possession of 13 bighas 11 biswas of land and a factory was running in the said premises and construction started in the year 1988 and was completed in May, 1989. The company started production in May, 1989 and the first bill for production was dated 27.05.1989. The company was registered as a Small Scale Industrial Unit. The averments were that after the Section 4 notification, objections under Section 5-A of the Act (Annexure P-5) had been filed and petitioner had put in appearance before the Land Acquisition Collector on 21.11.1993 but were not given proper hearing and only the revenue officials namely Kanungo and Patwari were present and they were shown the site-plan and no effective enquiry was made and the hearing was, thus, farce. It was further pleaded that 5 bighas and 14 biswas of land was sought to be acquired under Section 6 of the Act which was required for the workers and for drying the dyed yarns. The policy of the State Government not to acquire the land under construction was referred to and allegations were made that land owned by influential persons were released whereas the land of the petitioner having building and factory, was acquired and it was a colorable exercise and it was a mala-fide. Therefore, on account of setting up of the industrial unit, the notification was sought to be challenged on the ground that no proper survey was conducted. Further averments were that the State will have to pay huge compensation not only for the land but also for the building and loss of business. It was submitted that a Committee had been constituted to give advice to the Land Acquisition Collector whether a particular piece of

land is to be released or acquired and therefore, the Chief Administrator had influenced the report.

5. In the written statement filed by respondents No.1 & 2, the defence was that 7 bighas 16 biswas of the land of the petitioner had been released from acquisition after taking into consideration the objections under Section 5-A of the Act and the report of the Land Acquisition Collector and the Joint Site Inspection Committee (JSIC). It was further averred that the constructed area alongwith proportionate vacant area had already been released and the objections were duly heard by the LAC and the report was made to the Government. The factum of only Kanungo and Patwari being sitting there was specifically denied. No replication has been filed despite the written statement having been filed way-back in the year 1996. It was specifically denied that there was any vacant land falling within the vicinity of the land which was released from acquisition and the award had been made in respect of the land and duly announced. Proper notification had been done and objections were duly heard and the report of individual objection was made by the LAC after site inspection and sent to the Government. The petitioner was also present on the date of hearing of the objections under Section 5-A and there was no question of discrimination.

Pleadings of CWP-2840-1996

6. The land in question herein of the petitioners who are closely related, being brothers, which was of 3 portions, total measuring 14 bighas 12 biswas, stated to be running separate businesses, in different capacities as proprietary/partnership, in the said premises. In the writ petition, again specific averments were made that objections were filed

(Annexure P-5 to P-7) and the date before the LAC was fixed for 21.11.1993 and it was averred that only the Kanungo and Patwari were sitting there for hearing the objections and the petitioners showed them the site-plans but they were not heard and no effective enquiry was done. Similar averments were that the vacant land owned by influential persons falling in the vicinity of the land in question had been released whereas the land of the petitioners having building and factory were acquired and therefore, discrimination was pleaded. The issue of not hearing the objections of the petitioners in proper manner was also pleaded. The factum of 5 bighas 16 biswas of land having been released out of 14 bighas 12 biswas was conveniently brushed under the carpet. It was specifically mentioned that out of 137.59 acres of land of the village which was sought to be acquired, the Government had only acquired 131.62 acres and the remaining land had been released only because there were constructed building on the land and therefore, the entire land of the petitioners deserve to be released.

7. The State, in its defence, had taken a similar plea that 5 bighas 16 biswas of land had already been released after considering the objections filed under Section 5A and the petitioners were duly heard by the LAC and the award was passed regarding the balance land. The released portion was stated to be the constructed portion alongwith proportionate vacant land. Petitioners were stated to have been duly heard and it was specifically pleaded that the accountant of the petitioners, namely, Ajay Kumar, who was representing the petitioners, had appeared and was present on the date of hearing of the objections.

Arguments on behalf of the petitioners :

8. Counsel for the petitioners has primarily argued on the aspect of Section 5A of the Act and the fact that they have valuable and important right and the State has to apply its mind and declaration under Section 6 should be justified. Reliance has been placed upon the judgment passed by the Apex Court in **Women's Education Trust Vs. State of Haryana & others, (2015) 8 SCC 99** and **Surinder Singh Brar & others Vs. Union of India & others, (2013) 1 SCC 403** apart from the judgment passed by one of us (G.S.Sandhawalia J.) in **Devendra Singh Yadav & others Vs. State of Haryana & others, 2013 (3) RCR (Civil) 1040**.

Reasons for not agreeing with the contentions :

9. A perusal of the objections which have been filed by the petitioners, as noticed, was primarily on the ground that there was construction in the form of industrial unit and the land was situated near the Municipal limits of Panipat and surrounded from all corners by other factory buildings and it was more or less an industrial area. The entire area was stated to be constructed and therefore, could not be acquired apart from that the plea of allotment of commercial sites was also claimed and costs for damage for shifting of the machinery. Various other objections were raised apart from factory being running in the land and that the entire construction being of A-Class building and without proper identification, the entire notification was void and liable to be set aside.

10. As noticed, in both the cases, substantial chunks of land had been released since in the first case, more than half of the land which was subject matter of acquisition of M/s Geeta Spinning Mill, out of 13 bighas 11 biswas, 5 bighas 14 biswas had been sought to be acquired and the left

out land is 7 bighas 16 biswas. The same was obviously on hearing which had taken place on account of objections filed under Section 5A and keeping in view the fact that there was construction on the site, the land has been released. In the case of M/s Globe Engineering Works, G.T.Road, the 3 sale deeds combined being the area of land measuring 14 bighas 12 biswas was subject matter of acquisition and 5 bighas 16 biswas had been released which is roughly $\frac{1}{3}^{\text{rd}}$ of the land under acquisition which would go on to show that there was proper application of mind under Section 5A of the Act and only the constructed portion had been released.

11. The State has also filed its additional affidavit to point out that in the case of M/s Geeta Spinning Mill, a sum of Rs.5,90,857/- is lying deposited with the LAC for the land measuring 5 bighas 14 biswas which the landowner had not lifted. The land of the petitioner was affecting the planned development of 6 number of plots of 1 kanal category near dispensary site of Sector 18, Panipat and the land is needed to execute the demarcation of the plots and the site-plan is also appended as Annexure R-1, showing the said stance and verifying the factum that the land is required for the planned development of the residential area.

12. Similarly, for M/s Globe Engineering Works, the stand in the additional affidavit is that for the land which is acquired, compensation of Rs.10,64,234/- for the land measuring 8 bighas 16 biswas was not lifted and is lying deposited with the LAC and the area is affecting the planning of public and semi-public area of Sector 18, Panipat and therefore, the same was very much essential for the public purpose.

13. We have also seen the site-plan which is appended that the land in question is falling very close to the GT Road leading to Delhi and there are also commercial plots cut next to the acquired land and therefore, the land is required for the planned development and due to the interim protection, the development is being held up. In such circumstances, once there is proper application of mind by the authorities and release has been ordered which was of factory area and proportionate open space of 7 bighas 16 biswas in one case and 7 bighas 16 biswas in the second case, we do not feel that the State has not heard the petitioners in proper manner.

14. The judgments which have been relied upon, thus, are not applicable to the facts and circumstances of the present cases, since in Women's Education Trust (supra), the bone of contention was the plea of discrimination and the fact that separate objections filed under Section 5A(1) had not been taken into consideration by the High Court since the matter had been disposed of as a bunch of cases. It was noticed that similarly situated persons had raised construction who had been granted the benefit of release and therefore, the High Court having not taken that into account, the appeals were allowed and the matter had been sent back for fresh disposal.

15. Similarly, in Surinder Singh Brar (supra), the issue was regarding the report to be made by the Collector and forwarded to the Government and the formation of the opinion on the issue of need of land for a public purpose. The recommendations having not been considered by the Government and the failure of the Appropriate Government to take an active decision was the reason that the Apex Court set aside the

acquisition. It had been specifically noticed that there was non-application of mind at all levels and the acquisition was not a bona fide public purpose but in the garb of acquiring the land for IT Park and the Administration wanted to favour the private developers. Thus, the issue was based totally on different facts and circumstances and the judgment would not be applicable, keeping in view the fact that the petitioners themselves are beneficiaries of substantial amount of land release.

16. In Devendra Singh Yadav (supra), the reason which weighed with us was that the publication was also in a newspaper which had poor and no circulation and thus, the landowners were prejudiced to file their objections within limitation. The local proclamation by way of beat of drum would give a right, as such, to the petitioners to file objections and the officers were in error in dismissing the same by calculating the date from the publication in the newspaper. In such circumstances, it was held that the substantial right of the petitioners had been taken away to urge before the authorities that their land should not be acquired and resultantly, only Section 6 notification had been quashed and therefore, the said judgment would also not be of much help to the petitioners.

17. In view of the objections of the petitioners being duly heard and no replication being filed to the written statement and the additional factor that the petitioners themselves concealed the factum of release of land by giving a picture before this Court at the initial stage of non-application of mind by the authorities, to get an interim order by which they had benefitted and continued to remain in possession for almost 30 years. Thus, we are loath to interfere in the acquisition proceedings, in view of the law laid down by the Apex Court that the petitioners who

approach a Writ Court and get interim orders on the basis of concealment are not liable to be heard also on merits, as has been held in **M/s Prestige Lights Ltd. Vs. State Bank of India, 2007 (8) SCC 449.**

18. The said view has consistently been followed thereafter by the Apex Court in **Dalip Singh Vs. State of Uttar Pradesh & others, 2010 (2) SCC 114**, wherein the issue in question was regarding the possession of surplus land and on account of misleading statement made, the interim order had been passed by the High Court and frustrating the efforts made by the authorities to distribute the surplus land among landless persons.

19. In **Ramjas Foundation & another Vs. Union of India & others, 2010 (14) SCC 38**, the issue was regarding acquisition of Wakf property and after the dismissal of the first appeal, possession of the land was taken by the LAC and transferred to the Delhi Development Authority. Resultantly, it was held that an interim order had been passed by persuading the Court almost a decade earlier while concealing the details of cases and the appeal was dismissed, by noting that because the petitioner was running educational institutions, exemplary costs had not been imposed.

20. In **Kishore Samrite Vs. State of U.P. & others, 2013 (2) SCC 398** the same principle was applied and it was noticed that abuse of the process of Court was taking place and to approach the Court with clean hands was the required duty of the client to seek the benefit of equity and no litigant can play hide and seek. The one who comes with soiled hands with suppression of facts was not entitled for the relief and the judicial

process could not become instrument of oppression or abuse to subvert justice by unscrupulous litigants.

21. However, it is another matter that we have also considered their case on merits and also do not accept the arguments now raised. Resultantly, in view of the above discussion, the present writ petitions are hereby dismissed. All interim orders stand vacated.

(G.S. SANDHAWALIA)
JUDGE

14.10.2024
Sailesh

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	