

Date of Decision: 02.08.2014 Vs. Date of Decision: 02.08.2014

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Court : Punjab and Haryana

Decided On : Aug-02-2014

Appellant : Date of Decision: 02.08.2014

Respondent : Date of Decision: 02.08.2014

Judgement :

CWP No.15237 of 2014 -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH Date of Decision: 02.08.2014 CWP No.15237 of 2014 Dushyant -----Petitioner versus State of Haryana and others ----Respondents
CORAM: HONBLE Mr.JUSTICE ASHUTOSH MOHUNTA ACTING CHIEF JUSTICE and HONBLE Mr.JUSTICE HARINDER SINGH SIDHU Present: Mr.Ravinder Hooda, Advocate For the appellant HARINDER SINGH SIDHU,J This petition has been filed praying for quashing of notification dated 19.01.2012 under Section 4 of the Land Acquisition Act, 1894 (for short the Act) and notification under Section 6 of the Act, dated 17.01.2013 in respect of the land of the petitioner comprised in KhaSr.No.3356/177/2 (0-14).5171/262/1 (1-6).254/1 (1-6).254/2 (0-5) situated in Tehsil Bahadurgarh District Jhajjar.

A further prayer has also been made to quash order (P-10) whereby the claim of the petitioner for release of his land has been declined.

The petitioner states that he is the owner of the land subject matter of the acquisition.

The said land was earlier sought to be acquired but was released vide letter No.254 dated 12.05.1997 which ATUL KUMAR TRIPATHI201408.11 18:16 CWP No.15237 of 2014 -2- release was confirmed vide letter dated 03.02.2011.

He stated that pursuant to the said release, he had requested the Administrator, HUDA to grant an NOC to him pursuant to an agreement between him and the said authority.

He had also deposited an amount of Rs.35,90,165 on account of EDC to the Estate Officer, Bahadurgarh through a demand draft dated 25.03.2011.

Subsequently, the petitioner sold this land by way of registered sale deed to the other Rs.who raised construction thereon.

Apprehending the demolition of the construction at the hands of the Town and Country Planning Department, Govt.

of Haryana, the petitioner and the transferees from him filed a civil suit before the Additional Civil Judge (Sr.Division).Bahadurgarh praying that the defendant authorities therein be permanently restrained from demolishing the building raised by the petitioner and the other plaintiffs.

It is stated that the Civil Judge (Jr.

Division).Bahadurgarh vide order dated 28.01.2012 granted temporary injunction in favour of the petitioner and the other plaintiffs.

On 19.01.2012, a notification under Section 4 of the Act was published in respect of land measuring 2.21 acres comprising in KhaSr.Nos.3356/117/2(0-14).5171/262/1(1-6).254/1 (1-6) and 254/2(0-5).The petitioner and the other owners of land filed objections before the Land Acquisition Officer, Urban Development Department, Rohtak, in which they stated that the land had earlier been proposed to be acquired but was released.

They had developed the aforesaid land CWP No.15237 of 2014 -3- in accordance with law and they had applied to the Municipal Corporation for the construction of the land and the map for the same was approved by the Municipal Corporation.

It is stated that the Land Acquisition Collector prepared his report under Section 5-A of the Act, wherein, construction on the land of the petitioner had come on record.

The Joint Site Inspection Committee (JSIC) had also recorded the fact of the construction on the land, but without any decision on the recommendation of the JSIC, the notification under Section 6 of the Act was issued on 17.01.2013.

The petitioner filed CWP No.4764 of 2013 seeking quashing of the notifications u/s 4 and 6 of the Act for acquisition of his land.

In the said petition, it was contended that the JSIC, constituted by the State Government, had conducted a survey of the area to be acquired.

Several meetings were held and on 07.08.2012, the said Committee recommended exemption of the existing structures from acquisition but despite the said recommendation, the notification under Section 6 of the Act was issued and action on the recommendations of the JSIC was deferred to be considered by the Urban Estate Department before announcement of the Award.

The petitioner prayed for a mandamus to direct the State Government to take appropriate decision on the recommendations of the JSIC in accordance with their policy.

The said petition was disposed of vide order dated March 11, 2013 directing the State Authorities to consider the claim of the petitioner and dispose of the same by passing a speaking order in accordance with law.

CWP No.15237 of 2014 -4- In compliance with the directions of this Court passed in CWP No.4764 of 2013, the Director General, Urban Estates, Haryana has passed order (P-10) recommending that the residential houses of owners whose objections are listed at Sr.Nos.4, 6, 12, 14, 16 and temple at Sr.No.18 be excluded from the acquisition proceedings to the extent of plot area.

The case for exclusion from acquisition for the remaining objections was rejected as being devoid of merit.

Learned counsel for the petitioner has contended that the notifications under Sections 4 and 6 of the Act as also order (P-10) deserve to be set aside.

His primary contention is that 24 objections were submitted against the acquisition but only area comprised in objections No.4, 6, 12, 14, 16 and 18 has been recommended to be released from acquisition whereas the area comprised in remaining objections has not been released from acquisition.

We have heard learned counsel for the petitioner and perused the record annexed with the writ petition.

After issuance of notification under Section 4 of the Act, the petitioner had submitted his objections to the acquisition through his letter dated 15.02.2012 (P-6) wherein he stated that to get the aforesaid land developed by the HUDA he had deposited an amount of Rs.35,90,165/-.

He further stated that he intended to construct the residential building thereupon, which was permissible as per rules laid down by the Department.

He stated that he has a residential house, in which he resides, which may be released from acquisition.

CWP No.15237 of 2014 -5- It has come on record in Annexure (P-7) that pursuant to notification under Section 4 of the Act, a total 24 individuals submitted their objections.

The Land Acquisition Officer in his report stated that the land owners of objections listed at Nos.1, 2, 5, 8, 9, 10, 11, 15, 17, 19, 22, 23 and 24 had constructed only boundary walls and foundation.

In respect of land pertaining to objections No.3, 7, 13, 20 and 21, the owners had constructed one room and boundary walls but in respect of land pertaining to objections No.4, 6, 12, 14 and 16, the owners had constructed residential buildings and this construction was prior to Section 4 notification.

Regarding objection No.18, it was determined that a temple stands constructed there, which was also prior to Section 4 notification.

Based on the above report, JSIC in its meeting held on 07.08.2012, after inspecting the site and after receiving the report from DTP, Jhajjar, recommended that the land with respect to objections No.1, 2, 5, 8, 9, 10, 11, 15, 17, 19, 22, 23 and 24, wherein only boundary wall and DPC level construction has been done, may be recommended for notification under Section 6 of the Act.

Similarly, the land comprised in KhaSr.Nos.3, 7, 13, 20 and 21 where only one room and boundary wall have been constructed but the rooms were uninhabited be also recommended for notification under Section 6 of the Act.

Qua objections No.4, 6, 12, 14 and 16, which were inhabited residential houses and raised prior to notification dated 19.01.2012 issued under Section 4 of the Act, but the construction had been raised in violation of provision of Sections 6 and 7 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 CWP No.15237 of 2014 -6- and there was also violation of Section 7(1) of the Haryana Development and Regulation of Urban Areas Act, 1975, the JSIC recommended that the proportionate land under covered area vis--vis structure plot and survey of the structures subject to decision of Court cases, compounding of offence permissible under relevant Acts and acquiring part of land coming in road as per approved lay out plan of Sector 2, Bahadurgarh, be released.

The land pertaining to objection No.18, wherein a temple has been raised, was also recommended to be excluded from notification under Section 6 of the Act.

But before these recommendations were acted upon, notification under Section 6 was issued on 17.01.2013.

Thereafter, the petitioner filed CWP No.4764 of 2013, wherein directions were issued to respondent-State to consider the claim of the petitioner and dispose of the same by passing a speaking order.

The matter was examined by the Director General, Urban Estates, Haryana, who has passed a detailed speaking order.

Opportunity of hearing was given to the petitioners. The hearing was given to 21 petitioners of the said writ petition who attended personally or through their representatives.

In the said order, it has been noted that the land subject matter of the present acquisition comprises 2.21 Acres, which is in the Revenue Estate of Village Bahadurgarh.

This land is located within the already acquired Sector 2, Bahadurgarh but was somehow not included in the earlier notification.

As per the report of the JSIC dated CWP No.15237 of 2014 -7- 15.03.2011, this land was vacant at the site.

Once the acquisition proposal was framed, the owner of the land divided the area into plots and sold the same to different owners in the form of unauthorized colony in gross violation of provisions of Section 7(1) of the Haryana Development and Regulation of Urban Areas Act, 1975.

In this regard, District Town Planner, Bahadurgarh sent a complaint to the office of SSP, Jhajjar vide memo No.DTP (JH)/2010/601 dated 09.04.2012 for registration of FIR and prosecution of offenders. FIR No.521 dated 03.11.2012 was registered against the petitioner.

Referring to the report of JSIC and other record, it was noted that most of the sites are vacant.

Only DPC level construction has been raised as is evident from the photographs submitted by the petitioner at the time of hearing.

Only in case of owners figuring at Sr.Nos.4, 6, 12, 14 and 16 as per the list of objections prepared by the Land Acquisition Collector, the residential houses were found to be existing.

Apart from this, one temple regarding which objection at Sr.No.18 was filed, was also in existence before issuance of notification under Section 4 of the Act.

In all other cases, DPC or partly constructed walls are in existence.

It was further noted that the petitioner, even after registration of FIR registered against him, continued to sell the plots to unsuspecting persons.

It was also noted that violators of regulatory laws cannot be permitted to derive any benefit from their own wrongs.

Hence, the recommendations were made for exclusion of owners listed at Sr.Nos.4, 6, 12, 14 and 16 and a temple at Sr.No.18 from the acquisition CWP No.15237 of 2014 -8- proceedings to the extent of plot area as only these are covered by the guidelines dated 08.01.2007 and the policy dated 24.01.2011.

The Counsel for the petitioner has not been able to factually counter the aforesaid contents of the report.

This being the position, the petitioner is not entitled to any relief.

No legal infirmity could be pointed out in the acquisition.

The petitioner has not been able to make out a case for release of the land beyond what has been recommended in the order Annexure P-10.

Resultantly there is no merit in the writ petition and the same is dismissed.

(ASHUTOSH MOHUNTA) (HARINDER SINGH SIDHU) ACTING CHIEF JUSTICE
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