

MANU/SC/0062/2014

Equivalent Citation: 2014vii AD (S.C.) 684, AIR2014SC1212, 2014(4)ALD49(SC), 2014(3)ALLMR475, 2014 (3) AWC 2186 (SC), 2014(2)CTC331, JT2014(2)SC392, 2014(1)RCR(Civil)909, 2014(1)SCALE755, (2014)3SCC203, (2015)1WBLR(SC)171, 2014 (3) WLN 1 (SC)

IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 973-974 of 2014 (Arising Out of SLP (C) Nos. 14383-14384 of 2012)

Decided On: 28.01.2014

Appellants: Vinod Kumar

Vs.

Respondent: State of Haryana and Ors.

Hon'ble Judges/Coram:

S.J. Mukhopadhaya and V. Gopala Gowda, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Pallav Sisodia, Sr. Adv., Pawan Upadhyay, Anisha Upadhyay, Param Mishra and Sharmila Upadhyay, Advs.

For Respondents/Defendant: Manjit Singh, Narender Hooda, AAG, Vikas Sharma, Kamal Mohan Gupta, Jaspreet S. Rai, Rohit Nagpal, Gurkirat Kaur, Pooja Jyotwal, Jyoti Mendiratta, Rajan K. Chourasia and Anubha Agrawal, Advs.

Subject: Land Acquisition

Acts/Rules/Orders:

Haryana Urban Development Authority Act, 1977; Land Acquisition Act, 1894 - Section 4, Land Acquisition Act, 1894 - Section 4(1), Land Acquisition Act, 1894 - Section 5A, Land Acquisition Act, 1894 - Section 5A(2), Land Acquisition Act, 1894 - Section 6, Land Acquisition Act, 1894 - Section 6(1), Land Acquisition Act, 1894 - Section 6(3); Unregulated Development Act, 1963

Cases Referred:

New Vidya Niketan Educational Society v. State of Haryana and Ors.; Kamal Trading (P) Ltd. v. State of West Bengal MANU/SC/1492/2011 : (2012) 2 SCC 25; Usha Stud and Agricultural Farms Pvt. Ltd. v. State of Haryana MANU/SC/0286/2013 : (2013) 4 SCC 210; Women's Education Trust and Anr. v. State of Haryana and Ors. MANU/SC/0504/2013 : (2013) 8 SCC 99; Shyam Nandan Prasad and Ors. v. State of Bihar and Ors. MANU/SC/0567/1993 : (1993) 4 SCC 255

Prior History:

From the Judgment and Order dated 05.04.2011 of the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 7746 of 2009

Citing Reference:

Discussed

4

Disposition:

Appeal Allowed

Case Note:

Land Acquisition Act, 1894 (since repealed) - Sections 4, 5A and 6 (Sections 11, 12, 15 and 19 of New Act, 2013)--Acquisition of land--For development and utilization of land as residential and commercial purposes--Exemption from acquisition--Land Acquisition Collector in his report mentioned that land of appellant may not be acquired since there was already residential building on land on date of notification--In spite of report produced by Land Acquisition Collector, Development Authority made declaration that appellant's land is to be acquired for development of residential and commercial sectors--Government has to consider

report of Land Acquisition Collector while making declaration of acquisition of land under Section 6--If Government comes to conclusion which is contrary to report, then Government has to provide appropriate reason for same--In instant case, declaration made by Government for acquisition of land of appellant under Section 6 does not provide any reason for arriving at decision contrary to that of report produced by Land Acquisition Collector--Therefore, basic protection to which land owners are entitled to under Section 5A--Is violated--Consequently, process of acquisition of land of appellant, tainted with mala fide and, therefore, same liable to be set aside--Accordingly, impugned acquisition notifications under Sections 4 and 6 in relation to appellant's land and action taken thereon--Quashed--Impugned judgment and orders of High Court--Set aside.

Subject Category :

LAND ACQUISITION AND REQUISITION MATTERS - MATTERS CHALLENGING THE ACQUISITION PROCEEDINGS

#### JUDGMENT

V. Gopala Gowda, J.

1. Delay condoned. Leave granted.

2. These appeals are filed by the Appellant questioning the correctness of the judgment and final Order dated 05.04.2011 passed in C.W.P. No. 7746 of 2009 and order dated 16.12.2011 passed in Review Application No. 388 of 2011 by the High Court of Punjab and Haryana at Chandigarh, urging various facts and legal contentions in justification of his claim.

3. Necessary relevant facts are stated hereunder to appreciate the case of the Appellant and also to find out whether the Appellant is entitled for the relief as prayed in this appeal.

The Appellant is the owner of 5 Kanals 6 Marlas of land out of which 934 square yards have been left out of acquisition. On 07.02.2008, under the Haryana Urban Development Authority Act, 1977, the Haryana Urban Development Authority issued a notice for acquisition of land including that of the Appellant for public purpose namely, for the development and utilization of the land as residential and commercial purposes. The notification was issued Under Section 4 of the Land Acquisition Act, 1894 (in short 'the Act') and the Land Acquisition Collector, Urban Estate, Faridabad, Haryana was authorized to issue public notice on the substance of notification at convenient places in the locality. He was also authorized to survey upon the land and take necessary action regarding the same. The Appellant filed a detailed objection Under Section 5A of the Act categorically stating that the Appellant has raised an A Class construction on the concerned area in the year 1999-2000 and therefore, inclusion of the land for the purpose of acquisition is not justified. In the meanwhile, on 10.03.2008, the said land was released by the Authority in favour of Ritwiz Builders and Developers Pvt. Ltd. However, on 15.09.2008, the Land Acquisition Collector considered the objection filed by the Appellant Under Section 5A of the Act and as per his report, exempted the land of the Appellant from acquisition since there was already a residential building on the land on the date of the notification. In spite of the report produced by the Land Acquisition Collector, the Haryana Urban Development Authority vide notification dated 06.02.2009 made a declaration that the Appellant's land is to be acquired for the development of residential and commercial Sector Nos. 76, 77 and 78 for which the notification was initially issued on 07.02.2008.

4. It is the case of the Appellant that while issuing the notification Under Section 6 of the Act, the property adjoining to the land of the Appellant, which belongs to one M/s. Harpreet Food, was released. Though the Respondent Authority has released a portion of the Appellant's property, some part of the built-up and constructed portion of the house was not released.

5. The Appellant therefore, filed a writ petition before the High Court of Punjab and Haryana registered as Writ Petition No. 7746 of 2009, challenging the acquisition of his land by the Authority. The said petition got tagged along with other similar petitions filed by different affected parties and the Writ Petition No. 7711 of 2009, titled New Vidya Niketan Educational Society v. State of Haryana and Ors. was made the lead case.

6. The High Court, after hearing both the parties concluded that in all the writ petitions, construction was raised in an unauthorized manner without getting any permission either under the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 or under the relevant Municipal laws. Even then in some cases, relief was granted by releasing some portion of the land under construction and ordering acquisition of vacant land. The action taken by the Authority

was held perfectly justified. The Review Application No. 388 of 2011 filed by the Appellant against dismissal of his C.W.P. No. 7746 of 2009 was also dismissed on 16.12.2011. Hence, these appeals.

7. The learned senior Counsel Mr. Pallav Sisodia, appearing on behalf of the Appellant argued that the High Court failed to appreciate that there was a construction already made by the Appellant for residential purpose. Therefore, as per the policy of the Government of Haryana, the constructed portion including the amenities and other built up areas are required to be released from the process of acquisition. It is the further case of the Appellant that the High Court erred in not appreciating the fact that the Land Acquisition Collector in his report has mentioned that the land of the Appellant may not be acquired since it has a well-laiden beautiful residence. The State Government, as per the learned senior Counsel, illegally and in an unauthorized manner, has acquired the land. It is also the case of the Appellant that in a different case having similar facts, the High Court has passed an Order releasing the lands over which built up houses were situated. The learned senior Counsel of the Appellant further argues that the Government has adopted the 'pick and choose' methodology for acquiring land thereby exempting the commercial establishments from acquisition and discriminating against the Appellant.

8. The learned Additional Advocate General Mr. Manjit Singh, appearing on behalf of the State contended that the Appellant had illegally raised construction on this land without permission of the concerned authority. Hence, the Appellant cannot now seek exemption from acquisition on the ground that there is a residential construction on the land and therefore, the land cannot be acquired.

9. We are inclined to observe that the High Court has erred in dismissing the writ petition of the Appellant as the same is contrary to the principle laid down by this Court in the following cases:

*In Kamal Trading (P) Ltd. v. State of West Bengal* MANU/SC/1492/2011 : (2012) 2 SCC 25, it has been held as under:

14. It must be borne in mind that the proceedings under the LA Act are based on the principle of eminent domain and Section 5A is the only protection available to a person whose lands are sought to be acquired. It is a minimal safeguard afforded to him by law to protect himself from arbitrary acquisition by pointing out to the authority concerned, inter alia, that the important ingredient, namely, "public purpose" is absent in the proposed acquisition or the acquisition is mala fide. The LA Act being an expropriatory legislation, its provisions will have to be strictly construed.

15. Hearing contemplated Under Section 5A(2) is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition and make a report. The report of the Collector referred to in this provision is not an empty formality because it is required to be placed before the appropriate Government together with the Collector's recommendations and the record of the case. It is only upon receipt of the said report that the Government can take a final decision on the objections. It is pertinent to note that declaration Under Section 6 has to be made only after the appropriate Government is satisfied on the consideration of the report, if any, made by the Collector Under Section 5A(2). As said by this Court in Hindustan Petroleum Corpn. Ltd., the appropriate Government while issuing declaration Under Section 6 of the LA Act is required to apply its mind not only to the objections filed by the owner of the land in question, but also to the report which is submitted by the Collector upon making such further inquiry thereon as he thinks necessary and also the recommendations made by him in that behalf.

16. Sub-section (3) of Section 6 of the LA Act makes a declaration Under Section 6 conclusive evidence that the land is needed for a public purpose. Formation of opinion by the appropriate Government as regards the public purpose must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. It is, therefore, that the hearing contemplated Under Section 5A and the report made by the Land Acquisition Officer and his recommendations assume importance. It is implicit in this provision that before making declaration Under Section 6 of the LA Act, the State Government must have the benefit of a report containing recommendations of the Collector submitted Under Section 5A(2) of the LA Act. The recommendations must indicate objective application of mind.

In the case of *Usha Stud and Agricultural Farms Pvt. Ltd. v. State of Haryana* MANU/SC/0286/2013 : (2013) 4 SCC 210, it was held as under:

30. ...Section 6(1) provides that if the appropriate Government is satisfied, after considering the report, if any, made by the Collector Under Section 5A(2) that particular land is needed for the specified public purpose then a declaration should be made. This necessarily implies that the State Government is required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made Under Section 6(1).

(Emphasis laid by this Court)

Further, in the case of *Women's Education Trust and Anr. v. State of Haryana and Ors.* MANU/SC/0504/2013 : (2013) 8 SCC 99, this Court has held as under:

20. What is most surprising is that the High Court did not even deal with the issue relating to application of mind by the Government to the report submitted by the Land Acquisition Collector Under Section 5A(2) along with his recommendations. The documents produced before the High Court and this Court do not show that the State Government had objectively applied mind to the recommendations made by the Land Acquisition Collector and felt satisfied that the land in question deserves to be acquired for the purpose specified in the notification issued Under Section 4(1). The record also does not contain any indication as to why the State Government did not consider it proper to accept the recommendations of the Land Acquisition Collector. Therefore, there is no escape from the conclusion that the impugned acquisition is ultra vires the provisions contained in Section 6 of the Act.

(Emphasis laid by this Court)

Also, in an earlier case in *Shyam Nandan Prasad and Ors. v. State of Bihar and Ors.* MANU/SC/0567/1993 : (1993) 4 SCC 255, this Court observed that compliance of Section 5A of the Act is a *sine qua non* for acquisition of land. This Court held that:

10...The decision of the Collector is supposedly final unless the appropriate Government chooses to interfere therein and cause affectation, suo motu or on the application of any person interested in the land. These requirements obviously lead to the positive conclusion that the proceeding before the Collector is a blend of public and individual enquiry. The person interested, or known to be interested, in the land is to be served personally of the notification, giving him the opportunity of objecting to the acquisition and awakening him to such right. That the objection is to be in writing, is indicative of the fact that the enquiry into the objection is to focus his individual cause as well as public cause....

10. In the light of the foregoing cases, it is evident that the government has to consider the report of the Land Acquisition Collector while making declaration of acquisition of land Under Section 6 of the Act. Further, if the government is coming to a conclusion which is contrary to the report, then the government has to provide appropriate reason for the same. The report of Land Acquisition Collector is extracted hereunder:

REPORT Under Section 5A of SECTOR 76, 77, 78 FARIDABAD- Under Section 4 DATED 7.2.2008

S. No. of Obj. J.	Name of Place and Sector	Name of the Object or	Khasra No. total land	Total constructed area	Type of Const-ruction	Whether constru-ction before or after u/s 4	Objec-tion of the Petiti-oner	Recoo-mmendatio-n of L.A.O.
1	2	3	4	5	6	7	8	9
4	Farid-pur 76,77, 78							
5	-do-	Vinod son of Birbal	18/13/3 (4-10) 8/2/3 (1-16)/ 6-6	1200 Sq.yds. Residentia l Kothi swimming Pool Boundary Wall	A-Class	Prior	The appli- cant has reque- sted to get his house relea- sed from acqui- sitio-n	A well laiden beautiful residence . Hence, may not be acquired.

Sd/-L.A.O.  
15.09.2008"

11. Hence, the declaration made by the Government for acquisition of land of the Appellant Under Section 6 of the Act does not provide any reason for arriving at a decision contrary to that of the report produced by the Land Acquisition Collector. Therefore, the basic protection to which the landowners are entitled to under the Act through Section 5A is violated. Consequently, the process of acquisition of the land of the Appellant is tainted with *mala-fide* and therefore, the same is liable to be set aside. Accordingly, the impugned acquisition notifications Under Sections 4 and 6 of the Act in relation to the Appellant's land and the action taken thereon are hereby quashed. The impugned judgment and orders of the High Court are set aside. The appeals are allowed. No costs.

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