M/s Suvidha Traders and others Vs. State of Haryana and another

C.W.P.No. 6560 of 2006

Date of decision: 30-3-2007

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Shri A.K.Chopra, Senior Advocate with
Shri Deepak Manchanda, Advocate
for the petitioners.

Sarvshri Ashish Kapoor and R.S.Kundu, Additional
Advocate General Haryana

Shri Dinesh Nagar, Advocate,

K.S.GAREWAL,J.

Suvidha Traders and others filed this petition on April 27, 2006 to seek quashing of notification under Section 4 of the Land Acquisition Act and declaration under Section 6 of the Land Acquisition Act which are respectively dated May 10, 1989 (Annexure P-7) and May 9, 1990 (Annexure P-9). Subsequent to the declaration Land Acquisition Collector made the award on May 7, 1992 (Annexure P-10). A second award was made on June 21, 1994 (Annexure P-11) in respect of land which had earlier been covered under some litigation and in respect of which stay had been granted by the Court. Therefore, the petitioners are also seeking quashing of these awards.

The petitioners' land falls in Sector 6,7 and 8, Panipat, and is a part of a huge block of land, acquired for development and utilization as industrial/institutional/residential/ commercial areas in these Sectors. The petitioners' land is part of khasra No.719/1(1 Bigha 8 Biswas) and 720(14 Biswas). These parcels of land were purchased through sale deeds dated August 18, 1988, January 28, 1988 and April 29, 1988.

The petitioners have also pleaded that after buying the land they started construction on it on the basis of plans sanctioned by the Municipal Committee, Panipat and had also deposited development charges to the tune of Rs.26,964/-. The site plan had been passed on March 15, 1989. Furthermore, the petitioners had also received a notice dated December 12, 1988 from District Town Planner, Panipat under Section 12 (1) of the Punjab Scheduled Roads Act and the Act No.41 of 1953. The relevant documents concerning the purchase of land, mutation, sanction of building plan and the notice from the District Town Planner have been annexed to the petition as Annexure P-1 to P-6.

Petitioners state that they started their business in the premises in question in April, 1989, just a month before the issuance of notification under Section 4 on May 10, 1989. Thereafter, the petitioners filed objections under Section 5-A on June 8, 1989 as partners of Suvidha Traders. In their objections dated June 8,1989 they pleaded that they had purchased 1235.55 sq.yards through various sale deeds (details of which have been given above). They were dealers of Bajaj Autos and Voltas and were running their business under the name and style of M/s Suvidha Traders. At the time of filing of the objections "Suvidha Traders is running the business in a rented premises and is shifting shortly to the newly constructed premises on the above said land." The site plan had been sanctioned by the Municipal Committee Panipat on March 15, 1989. Construction was started in March 1989. Development charges had also been paid. The land abutted on Grand Trunk Road was situated within Municipal Limit of Panipat and was surrounded by different industrial concerns. Land was most valuable keeping in view its high potential and utility. The petitioners were getting their bread and butter from the business and many people were working in this concern. If the land was not released, the petitioners and their workers would suffer a great loss. The petitioners by running this business concern were contributing the industrial growth and development in the area besides employment to skilled and unskilled labour. Petitioners also relied on the survey report dated January 5, 1990 Annexure P-12 and a copy of the site plan Annexure P-13.

For reasons best known to them, the petitioners challenged the acquisition proceedings by filing a civil suit on April 21, 1992, seeking a declaration that the notifications be declared null and void. From the chronology described above it appears that the suit was filed before the award was pronounced. The suit was contested by the Land Acquisition Collector. On May 11, 1994, an order was passed by learned Senior Subordinate Judge, Panipat vacating the order of stay that had earlier been granted on April 24, 1992 which had continued to be extended from time to time. It was on account of this stay order that the petitioner's case was not covered by the first award dated July 5, 1992 but after the stay was vacated, the second award dated June 21, 1994 was passed. The petitioners filed an appeal which was dismissed on September 10, 1994 by learned Additional District Judge, Panipat but the petitioners were given a month's time to avail remedies provided under the law and respondents were directed not to take any steps for another month. Petitioners then filed Civil Revision 4122 of 1994 which was taken up on October 31, 1994. The petition was admitted and status quo regarding possession was directed to be maintained till disposal of the petition. The petition was finally heard on April 19, 2006. Petitioners' counsel requested that the suit may be permitted to be withdrawn with liberty to take such appropriate remedies which were available to them in accordance with law. Consequently, the suit was dismissed as withdrawn and the petition was rendered infructuous and disposed of as such on April 19, 2006. The petitioners then approached the Three Member Committee for release of their property but they did not get a favourable response, and they filed the present petition.

Respondents appeared and filed written statement raising preliminary objections that the acquisition proceedings had been carried out in accordance with law, notification under Section 4 had been published in the Gazette on May 10, 1989 and in two daily newspapers on May 17 and 18, 1989. The proclamation of the notification had been made in the locality on May 11, 1989. Likewise declaration under Section 6 had been published in the Gazette on May 9, 1990 and the two newspapers on May 17 and 18, 1990. The proclamation in the locality was made on May 11, 1990. Furthermore, the award was pronounced on June 21, 1994. The possession of the property was taken from the petitioner and handed over to HUDA on the date of the award. The petition was filed 12 years after the award. The petition was liable to be dismissed on the ground of delay and laches alone. As regards the objections under Section 5-A of the Act, the respondents replied that the petitioners' land fell in the green belt of the Sectors and could not be exempted from acquisition. Furthermore, the respondents pleaded that the stay order obtained by the petitioners from the Civil Judge on May 11, 1994 finally came to an end in April 19, 2006. The suit filed by the petitioners had been pending all along and was never decided, the suit was dismissed as withdrawn with liberty to seek appropriate remedies as available. Lastly, the absolute right of the State to acquire property for public purpose was asserted, the landowners had the right to collect compensation but no right to seek release of constructed portion. Reference was made to Division Bench judgment of this Court dated December 20, 1996 in C.W.P.No. 6833 of 1995 M/s Neeraj Textiles Vs. State of Haryana where it was held that the subjective satisfaction of the authorities with regard to the area to be acquired, the acquisition proceedings could not be challenged unless there were procedural illegalities.

On merits, the respondents pleaded that the petitioners were properly heard when they filed their objection under Section 5-A of the Act. However, very strangely, it was admitted by the respondents that the petitioners were running business on the acquired land before notification under Section 4 of the Act(more regarding this averment shall be discussed later). The land of the petitioners had been acquired as it fell in the green belt. The petitioners' application for release of the land was also heard by the authorities after giving them an opportunity of hearing. The respondents admitted that constructed areas belonging to many parties had been released from acquisition on the basis of the objections under Section 5-A of the Act but the petitioners' land fell in the green belt and could not be exempted from acquisition.

The issues that arise in this case are:-

> "Whether the petitioners' prayer for quashing of notifications under Sections 4 and 6 of the Land Acquisition Act and the award dated June 21, 1994 can be entertained after 12 years?
>
> And
>
> "Whether the petitioners' land deserved to be released from acquisition on the ground that neighboring land had been so released?"

Learned counsel for the petitioners has argued that the petitioners were running a profitable business from the showroom constructed on the acquired land. The construction had been done after due sanction of the plans from the Municipal Committee and payment of development charges. Petitioners had mistakenly sought relief from the wrong forum when they filed the civil suit for challenging the acquisition proceedings. Therefore, there was really no delay in filing the writ petition. Petitioners had a stay in their favour granted by the Civil Judge but when the stay was vacated and the application was dismissed, they had filed an appeal and obtained an interim stay. When appeal was dismissed they had filed a revision petition before this Court and status quo regarding possession was granted. It was when the revision was dismissed and suit was withdrawn, the petitioners filed the present petition.

The petitioners have not been able to satisfy us with regard to the reason why a civil suit was filed instead of a writ petition in the present form. Land acquisition proceedings are not open-ended proceedings which can go on eternally without an end. The procedure prescribed by the Land Acquisiton Act has certain well known stages. When a particular stage is reached, the party has certain specific rights and ultimately after the award is passed and possession the party still has the right to seek enhancement of compensation. In the present case the petitioners succeeded in getting a half-baked stay order before the award was pronounced. The stay was vacated after nearly two years later. Therefore, the second award relating to the petitioners' property was pronounced. We are not certain if the petitioners challenged the award through a reference under Section 18 of the Act but petitioners continued for 10 years with their efforts to get relief from the civil court until finally on April 19, 2006 their quest came to end.

The learned counsel referred to BEML Employees Housing Building Cooperative Society Ltd. Vs. State of Karnataka and others (2005) 9 SCC in support of his arguments that where the State Government fails to show any distinction between cases of landowners whose lands are acquired and cases of those landowners whose lands are excluded, the doctrine of hostile discrimination comes into effect and the proceedings are liable to be quashed. The petitioners are really challenging the acquisition proceedings after passage of more than a decade but are relying upon the following opinion expressed by the Supreme Court:-

> "All exercise of statutory discretion must be based on reasonable grounds and cannot lapse into arbitrariness or caprice which is anathema to the rule of law envisaged in Article 14 of the Constitution. The facts placed on record do not indicate that the case of the fifth respondent was (sic not) similar, if not identical, to that of the other landowners, whose lands were dropped from the acquisition proceedings. Neither the appellant, nor the State Government has been able to show us any rational distriction between the case of the fifth respondent and the case of the other landowners, whose lands were excluded from the acquisition. When this is so, it appears to us that the vice of hostile discrimination infects and vitiates the decision taken by the State Government to continue with the acquisition against the fifth respondent's land."

Reference was also made to Hindustan Petroleum Corporation Ltd. Vs. Darus Shahpur Chenai and others (2005) 5 SCC 627 in support of the arguments that the petitioners objection under Section 5-A of the Act had not been properly considered. In Hindustan Petroleum Corporation Ltd.'s case (supra) the Supreme Court had held as follows:-

> " Section 5-A confers a valuable and important right in favour of a person whose lands are sought to be acquired and having regard to the provisions contained in Article 300-A of the Constitution it has been held to be akin to a furndamental right. The State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.
>
> The definition of public purpose is of wide amplitude and takes within its seep the acquisition of land for a corporation owned or controlled by the State, like the appellant, as envisaged under sub-clause (iv) of clause (f) of Section 3 of the Act. But the same would not mean that the State is sole judge therefor and no judicial review shall lie.
>
> Hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. The State in its decision-making process must not commit any misdirection in law.
>
> Although assignment of reasons is the part of principles of natural justice, necessity thereof, may be taken away by a statute either expressly or by necessary implication. A

declaration contained in a notification issued under Section 6 of the Act need not contain any reason but such a notification must precede the decision of the appropriate Government. When a decision is required to be taken after giving an opportunity of hearing to a person who may suffer civil or evil consequences by reason thereof, the same would mean an effective hearing.

Lastly reliance is placed on Sube Singh and others Vs. State of Haryana and others (2001) 7 Supreme Court Cases 545 where the Supreme Court had held classification of properties for the purpose of release from acquisition on the basis of the type of construction was unreasonable, arbitrary and discriminatory. In this case it as held:-

"Since the acquisition of the lands is for the purpose of planned development of the area which includes both residential and commercial purposes, it is difficult to accept the case of the State Government that certain types of structures which according to its own classification are of 'A' Class can be allowed to remain while other structures situated in close vicinity and being used for same purposes (residential and commercial) should be demolished. There is no averment in the pleadings of the respondents stating the basis of classification of structures as 'A' 'B' and 'C' class nor is it stated how the amalgamation of all structures was not possible. It is not the same of the State Government and also not argued before the Court that there is no policy decision of the Government for excluding the lands having structures thereon from acquisition under the Act.

This assumes importance in view of the specific contention raised on behalf of the appellants that they have pucca structures with RC roofing, mosaic flooring etc. No attempt was also made from the side of the State Government to place any architrtectural plan of different types of structures proposed to be constructed on the land notified for acquisition in support of its contention that the structures which exist on the lands of appellants could not be amalgamated into the plan. On the facts and circumstances of the case, it must be held that the rejection of the request of the appellants for exclusion of their land having structures on them was not based on a fair and reasonable consideration of the matter. Such action of Government is arbitrary and discriminatory."

On behalf of State of Haryana reference was made to Narayan Prasad Agrawal Vs. State of Madhya Pradesh 2003(2) RCR (Civil) 794. In this case the notification had been issued under Section 4 of the Act in December 1989 and declaration under Section 6 was made simultaneously but urgency provisions had not been invoked. The proceedings were challenged after 11 years. In the interim period the landowners filed a civil suit to challenge the award. The suit was dismissed in default in 1998 and restored in 1999. After restoration of the suit the landowners sought temporary injunction but it was refused. Landowners filed an appeal before the learned Additional District Judge who had held that the suit was not maintainable in view of the decision of the Supreme Court in State of Bihar Vs. Dhirendra Kumar and Others (1995) 4 SCC 229. The Supreme Court held that delay of 11 years could not be condoned in a matter relating to land acquisition as by that time the authorities must have proceeded with land acquisition proceedings. Therefore, the courts were justified in holding that the extraordinary jurisdiction of the High Court should not be invoked. The High Court had dismissed the writ petition on the ground of delay and the Supreme Court refused to interfere. Reference was also made to Urban Improvement Trust Udaipur Vs. Bheru Lal and others 2002(2) P.L.J. 439. In this case the High Court had quashed the notification finding a legal defect in the declaration which was published beyond a period of one year of the date of the publication of notification under Section 4. This view was overruled by the Supreme Court. It was further held that the petition deserved dismissal on the ground of delay and laches. The declaration under Section 6 had been published in 1994. The objections were filed after 2 years which was sufficient to hold that they should not be entertained on the ground of delay. The reasons given by the Court were that in case where land is needed for a public purpose, entertaining a petition belatedly was likely to cause serious prejudice to people for whose benefits the housing scheme had been framed.

The weight of the legal authority is clearly against the petitioners. Delay of 12 years in challenging the notification is a not small matter. All forms of delay render the very purpose of acquisition futile, individuals who were to benefit from the development schemes suffer because full development cannot be done as along as stay orders are in operation and the landowners continue to live with hope that their property shall be released. The petitioners were obviously ill advised to file a civil suit. They did get some temporary relief in the form of stay orders but they were clearly following the wrong course of action as no civil court would ever have interferred in the acquisition proceedings.

The High Courts exercising extraordinary jurisdiction under Section 226 of the Constitution of India do frequently quash proceedings under the Land Acquisition Act if some illegality is detected. Indeed in the present case if action of the authorities was illegal then this court would have definitely interferred in favour of the petitioners. The petitioners have not been able to point out any form of illegality in the proceedings. The petitioners were given full hearing of their objections under Section 5-A. At that stage the petitioners' categoric stand was that permission was granted to them to construct in terms of Municipal Committee sanction dated March 29, 1989 (Annexure P-5). However, earlier to this the petitioners on December 12, 1988 been issued a showcause notice under Section 12 of the Punjab Scheduled Roads and Controlled Area (Restriction of unregulated Development) Act, 1963 (Annexure P-6) requiring them to stop further construction and appear before the District Town Planner, Karnal. In their objections filed on June 8, 1989 the petitioners' case was that they were running their business from rented premises and were shortly to shift to newly constructed premises for which the plans had been sanctioned by the Municipal Committee and communicated to them on March 29, 1989. The petitioners started their construction in March 1989 and they also paid development charges. The most crucial date is the date of the notification under Section 4, which is May 10, 1989 (Annexure P-7). This court has to see the situation of the property, the construction on the property or the extent thereof on this date. It is quite clear that after the receipt of the sanction in the end of March 1989, the petitioner could not have raised any construction before the land was acquired. From the above it is quite obvious that the land that was acquired was undeveloped and unconstructed. Construction was completed after the issuance of notification under Section 4. The rest of the story regarding civil litigation has already been described above. This petition filed in April 2006 challenging the acquisition is highly belated and deserves to be dismissed on the ground of delay and laches.

It was further contended that lands of similarly situated landowners had been released from acquisition. In this respect reference is made to site plan Annexure P-21 which shows that Suvidha Traders is situated right in the middle of a block of land and where neighbouring lands had been released. This has been cited as a ground to assert arbitrariness and discrimination. This contention has been seriously challenged by the respondents who have referred to their own site plan to highlight that many plots had indeed been released but the released plots were those which fell neither in the green belt nor on the service road. The site plan placed on record by respondents is marked C-1 and gives the exact location of the petitioners' property vis-a-vis the plot owned by Radhika Handloom, which the petitioners assert was similarly situated and was released from acquisition. The plan Annexure C-1 clearly reflects the two plots. It appears that the constructed portion of Radhika Handloom was set back by a considerable distance. Therefore, the 50 meter wide green belt and the 12 meter wide service road did not cover the constructed portion of Radhika Handloom. The location of Suvidha Traders unfortunately is rather disadvantaged. A large part of the constructed portion falls within the green belt and the remaining portion comes under a tri-junction of roads. Only a small insignificant unconstructed portion falls outside the green belt of the road.

The acquired properties are on the Grand Trunk Road from Karnal to Delhi. In the site plan a 50 meter wide green belt has been provided between the Grand Trunk Road and the service road, which itself is 12 meters wide. No property falling within the green belt or coming under the service road has been released from acquisition. This plan has made the situation very clear. Indeed land development requires that development plans must be strictly followed without deviation. Furthermore, the green belt is necessary for environmental reasons to protect the residential areas from sound and polluting gases emitted by vehicles passing on the Grand Trunk Road.

We are unable to see any similarity between Suvidha Traders and Radhika Handloom, one is within the green belt and the other demonstrably outside. There was a part of Radhika Handloom's property which did fall under the road, that portion was acquired. What has been left is the area at the back.

On the basis of the above we find that this petition is without merit. The grounds of alleged discrimination and the ground of stated illegality in the acquisition process are unfounded and baseless. These grounds cannot be gone into after 12 years.

This petition is dismissed, however, without any orders as to costs.

(K.S.GAREWAL)
JUDGE

(AJAI LAMBA)
JUDGE

March 30, 2007
RSK