

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP No. 2446 of 2011 (O&M)  
Date of decision: 29.1.2016

**Sh. Ajit Singh @ Ajit Pal and another**

**.. Petitioners**

**v.**

**Union of India and others**

**.. Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Kanwaljit Singh, Senior Advocate with  
Ms. Gurdeep Kaur, Advocate for the petitioners.

Ms. Anjali Kukar & Mr. S. K. Mahajan, Advocates for  
Union of India.

Mr. Naveen Kaushik, Addl. Advocate General, Haryana.

...

Rajesh Bindal J.

The petitioners have approached this court seeking a direction to respondent No. 1 to award compensation to them on account of restrictions imposed on them for use of their land located in the vicinity of Indian Air Force Station and Installations in Gurgaon.

Learned counsel for the petitioners submitted that the petitioners are owners of land, situated on old Delhi-Gurgaon Road, Palam Vihar Extn. Gurgaon. The Government of India issued notification on 14.2.2007, in exercise of powers conferred under Sections 3 and 7 of the Works of Defence Act, 1903 (for short, 'the Act') declaring that the land be kept free from buildings and other obstructions. The restrictions imposed were specified in the notification. Final declaration was issued on 13.1.2010. Despite the aforesaid restrictions having been imposed, the petitioners have not been paid any compensation under the provisions of the

Act. In support of the arguments, reliance was placed upon a Division Bench judgment of this court in M/s Travels Star Hotels (India) Limited v. Union of India and others, 2009(4) RCR (Civil) 487.

On the other hand, learned counsel for Union of India submitted that the land of the petitioners has not been acquired. Ownership still remains with the petitioners, hence, they are not entitled to any compensation.

Heard learned counsel for the parties and perused the paper book.

The relevant provisions of the Act are extracted below:

*“3. Declaration and notice that restrictions will be imposed.-*

(1) Whenever it appears to the Central Government that it is necessary to impose restrictions upon the use and enjoyment of land in the vicinity of any work of defence or of any site intended to be used or to be acquired for any such work, in order that such land may be kept free from buildings and other obstructions, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders.

(2) The said declaration shall be published in the Official Gazette and shall state the district or other territorial division in which the land is situate and the place where a sketch plan of the land, which shall be prepared on a scale not smaller than six inches to the mile and shall distinguish the boundaries referred to in Section 7, may be inspected; and the Collector shall cause public notice of the substance of the said declaration to be given at convenient places in the locality.

(3) The said declaration shall be conclusive proof that it is necessary to keep the land free from buildings and other obstructions.

*4. Power to do preliminary Acts after publication of notice under sub section 3, sub-section (2)-* It shall be lawful for such

officer as the [Central Government] may, by general or special order, authorise in this behalf, and for his servants and workmen, at any time after publication of the notice mentioned in section 3, sub-section (2), to enter upon and survey and take levels of any land in such locality, to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether any and, if so, what restrictions should be imposed on the use and enjoyment of the land, to set out the boundaries of the land upon the use and enjoyment of which restrictions are to be imposed, or of any part of such land, to mark such levels, boundaries and line by placing marks and cutting trenches, and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

5. *Payment for damage.*- The officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue officer of the district, and such decision shall be final.

6. *Further powers exercisable after publication of notice under Section 3, sub-section (2).* - (1) Whenever a declaration has been made and public notice thereof has been given under Section 3, it shall, subject to the provisions of sub-sections (2) to (4), be lawful for such officer as the Central Government may, by general or special order, authorise in this behalf, and for his servants and workmen, to enter and demolish any buildings or other constructions on the surface, to cut down or

grub up all or any of the trees, to remove or alter all or any of the banks, fences, hedges and ditches, to make underground and other drains, to fill up all excavations, and demolish all buildings and other constructions below the surface, and generally to level and clear the said land and do all such acts for levelling and clearing the same as he may deem necessary or proper, but in such manner nevertheless that evidence of the boundaries of the lands held by different owners may be preserved.

(2) The powers conferred by sub-section (1) shall not be exercised,-

(a) save as otherwise provided by sub-section (3), before the making of the award hereinafter referred to in Section 12, nor

(b) save as otherwise provided by sub-section (4), after the expiration of six months from the making of the said award, or any shorter period on the expiration of which the officer exercising such powers gives notice to the Collector that there will be no further exercise of them.

(3) In case of emergency, the Central Government may, by notification in the Official Gazette, declare that all or any powers conferred by sub-section (1) may be exercised at any time within six months after the publication of the notice referred to in Section 3, sub-section (2), and such powers may be exercised accordingly, and the said notification shall be conclusive proof of emergency.

(4) Nothing in sub-section (2) shall be deemed to preclude any such officer or his servants or workmen from exercising at any time the said powers for the purpose of removing, wholly or in part, any building or other obstruction maintained, created, added to, altered, planted, stacked, stored or otherwise accumulated in contravention of this Act or of any rule or order made thereunder or of any condition prescribed in accordance therewith.

7. *Restrictions.*- From and after the publication of the notice mentioned in Section 3, sub-section (2), such of the following restrictions as the Central Government may in its discretion declare therein shall attach with reference to such land, namely:-

(a) Within an outer boundary which, except so far as is otherwise provided in Section 39, sub-section (4), may extend to a distance of two thousand yards from the crest of the outer parapet of the work,-

(i) no variation shall be made in the ground level, and no building, wall, bank or other construction above the ground shall be maintained, erected, added to or altered otherwise than within the written approval of the General Officer Commanding the District, and on such conditions as he may prescribe;

(ii) no wood, earth, stone, brick, gravel, sand or other material shall be stacked, stored or otherwise accumulated:

Provided that, with the written approval of the General Officer Commanding the District and on such conditions as he may prescribe, road-ballast, manure and agricultural produce may be exempted from the prohibition:

Provided also that any person having control of the land as owner, lessee or occupier shall be bound forthwith to remove such road-ballast, manure or agricultural produce, without compensation, on the requisition of the Commanding Officer;

(iii) no surveying operation shall be conducted otherwise than by or under the personal supervision of a public servant duly authorised in this behalf, in the case of land under the control of military authority, by the Commanding Officer and, in other cases, by the Collector with the concurrence of the Commanding Officer; and

(iv) where any building, wall, bank or other construction above the ground has been permitted under clause (i) of this sub-

section to be maintained, erected, added to or altered, repairs shall not, without the written approval of the General Officer Commanding the District, be made with materials different in kind from those employed in the original building, wall, bank or other construction.

(b) Within a second boundary which may extend to a distance of one thousand yards from the crest of the outer parapet of the work, the restrictions enumerated in clause (a) shall apply with the following additional limitations, namely:-

(i) no building, wall, bank or other construction of permanent materials above the ground shall be maintained otherwise than with the written approval of the General Officer Commanding the District and on such conditions as he may prescribe, and no such building, wall, bank or other construction shall be erected: Provided that, with the written approval of the General Officer Commanding the District and on such conditions as he may prescribe, huts, fences or other constructions of wood or other materials, easily destroyed or removed, may be maintained, erected, added to or altered:

Provided, also, that any person having control of the land as owner, lessee or occupier shall be bound forthwith to destroy or remove such huts, fences or other constructions, without compensation, upon an order in writing signed by the General Officer Commanding the District; and

(ii) live hedges, rows or clumps of trees or orchards shall not be maintained, planted, added to or altered otherwise than with the written approval of the General Officer Commanding the District and on such conditions as he may prescribe.

(c) Within a third boundary which may extend to a distance of five hundred yards from the crest of the outer parapet of the work, the restrictions enumerated in clauses (a) and (b) shall apply with the following additional limitation, namely:-

no building or other construction on the surface, and no

excavation, building or other construction below the surface, shall be maintained or erected:

Provided that, with the written approval of the Commanding Officer and on such conditions as he may prescribe, a building or other construction on the surface may be maintained and open railings and dry brush-wood fences may be exempted from this prohibition.

xx

xx

xx

9. *Notice to persons interested.*- (1) At any time before the expiration of -

(a) the period of eighteen months from the publication of the declaration referred to in Section 3, or

(b) such other period not exceeding three years from the said publication as the Central Government may, by notification in the Official Gazette, direct in this behalf,

the Collector shall cause public notice to be given at convenient places on or near the land, stating the effect of the said declaration and that claims to compensation for all interests in such land affected by anything done or ordered in pursuance of such declaration may be made to him:

Provided that, where anything has been done in exercise of the powers conferred, in case of emergency, by Section 6, sub-section (3), the notice prescribed by this section shall be given as soon as may be thereafter.

(2) Such notice shall state the particulars of any damage ordered to be done or, in the case referred to in Section 6, sub-section (3), done in exercise of any of the powers conferred by the said section, and the particulars of any restrictions attaching to the land under Section 7, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective

interests in the land and the amount and particulars of their claims to compensation for damage to such interests and their objections (if any) to the measurements made under Section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business.

xx

xx

xx

12. *Inquiry and award by the Collector.*- On the day fixed under Section 9 or on any other day to which the inquiry has been adjourned, the Collector shall proceed to inquire into the objections (if any) which any person interested has stated pursuance to a notice given under the said section to the measurements made under Section 8, and into the decrease in the value of the land, and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of-

(a) the true area of the land and the nature of the obstructions from which the land is to be kept free;

(b) the compensation which in his opinion should be allowed for any damage caused or to be caused under Section 6 and for any restrictions imposed under Section 7; and

(c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom or of whose claims he has information, whether they



have respectively appeared before him or not.

13. *Award of the Collector when to be final.*- (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area of the land, the nature of the said obstruction from which the land is to be kept free, the damage caused or to be caused under section 6, the value of the rights restricted under section 7 and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

xx

xx

xx

16. *Matters to be considered and neglected.*- In determining the amount of compensation, the Collector shall be guided by the provisions contained in Sections 23 and 24.

xx

xx

xx

34. *Payment of interest.*- When the amount of any compensation awarded under this Act is not paid or deposited within fifteen days of making the award, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the date of the award until it is so paid or deposited.”

The Preamble of the Act shows that it was enacted to provide for imposing restrictions on use and enjoyment of land in the vicinity of the works of defence so that such land may be kept free from buildings and other obstructions and for determining the amount of compensation to be paid on account of such restrictions. Section 3 of the Act provides for issuance of notification showing intendment of the Government to impose restrictions upon the use and enjoyment of land in the vicinity of any work

of defence or of any site intended to be used or to be acquired for such work. The declaration is to be published in the Official Gazette. Such declaration is the conclusive proof that it is necessary to keep the land free from buildings and other obstructions.

Section 4 of the Act empowers the authorised officer of the Government to enter upon the land for the purpose of survey, digging and to do all other acts necessary to ascertain what restrictions should be imposed on the use and enjoyment of land.

Section 5 of the Act provides that at the time of such entry, the authorised officer shall pay or tender payment for damages to be suffered by the landowner during the course of survey. The adequacy of compensation can be disputed by the landowner. Section 6 of the Act provides for power to demolish any building or any other construction in the restricted area, besides cutting and removal of trees, fences, hedges etc.

Section 7 of the Act contemplates restrictions as may be declared by the Central Government on area which may extend to a distance of 2000 yards from the crest of the outer parapet of the work and some of the restrictions can extend upto the boundary of 1000 yards from the crest of the outer parapet of the work while third category of restrictions can be upto a distance of 500 yards from the crest of the outer parapet of the work. The said restrictions may be against change of the ground level, against stacking or storing of any material or against making of any construction.

Section 9 of the Act envisages inviting claims from all interested persons within a period of 18 months from the date of publication of declaration under Section 3 of the Act or such period not exceeding three years as the Central Government may by notification direct.

Section 12 of the Act provides that the Collector, after making such enquiry and hearing the objections of the persons interested, shall assess the amount of compensation. The award of the Collector is final in terms of Section 13 of the Act.

The Collector has been defined under Section 2(f) of the Act, to mean an officer specially appointed by the Central Government to perform the functions of a Collector under the Act.

Section 16 of the Act provides that for determination of compensation, the Collector shall be guided by the provisions of Sections 23 and 24 of the Act. Section 34 of the Act provides that where the compensation is not paid or deposited within 15 days of making the award, the Collector shall also be liable to pay interest @ 6% per annum from the date of the award till the amount is paid or deposited.

The scheme of the Act, as referred to above, clearly provides that for any restrictions imposed by declaration notified under the Act, the landowners are to be suitably compensated. The Act does not envisage a situation for acquisition of land depriving the owners of their title.

Similar view was expressed by this court in M/s Travels Star Hotels (India) Limited's case (supra), where the owners of land in vicinity of ammunition deposit had challenged the demolition notices of the structures erected, which were in violation of the directions issued under the Act. While upholding the demolition notices, this court directed for payment of compensation along with interest.

For the reasons mentioned above, respondent No. 1 is directed to take appropriate steps for assessing the compensation payable to the landowners, in view of the restrictions imposed under the Act. The needful be done within a period of six months.

For the reason that the stand of Union of India, i.e., that the petitioners are not entitled to any compensation under the Act is totally misconceived, it is burdened with cost of ₹ 20,000/- to be paid equally to both the petitioners.

The writ petition stands disposed of accordingly.

(Rajesh Bindal)  
Judge

29.1.2016  
mk

(Refer to Reporter)