

Before Jasbir Singh & Augustine Geroge Masih, JJ.

RAJINDER KUMAR & ANOTHER,—Petitioners

versus

STATE OF HARYANA AND ANOTHER,—Respondents

CWP No. 941 of 2004

15th December, 2010

Constitution of India, 1950—Art. 226—Land Acquisition Act, 1894—Ss. 4 & 6—Land of petitioners sought to be acquired for public purpose—Challenge thereto on grounds of discrimination, policy of Government for release of constructed areas, etc.—Acquisition of land for police lines and its staff quarters and not under any HUDA scheme—Policy dated 26th June, 1991 of State Government not applicable—No illegality in acquisition of land—Publication in newspaper prior to publication in official Gazette—Whether violates S. 6(2) of 1894 Act—Held, no—S. 6(2) provides that last date of publication i.e. in official Gazette or newspapers or in the locality and giving of such public notice of declaration would be considered for calculation period within which award can be passed—Award announced prior to date of publication in official Gazette held to be within limitation.

Held, that the contention that the date of notification i.e. 5th November, 2003 has to be taken as the date of commencement of the period of limitation for calculation of limitation cannot be sustained but even if the date of publication in the Official Gazette is taken into consideration, which was 18th November, 2003 and the award is dated 17th November, 2005 still in the light of the judgments of the Hon'ble Supreme Court, the commencement of date of calculation for limitation would start on 30th November, 2003 when the proclamation of the declaration was made in the locality. The other contention that the publication in the Official Gazette should precede the publication in the newspaper also cannot be sustained in the light of the fact that the Hon'ble Supreme Court has held that Section 6(2) of the Act

provides for the mode of publication. A perusal of Sections 4 and 6 of the Act would show that the word “notification” is specifically used in Section 4(1) of the Act whereas no such word is found in Section 6 of the Act where the Act deals with the declaration which does not mandate notification but mere publication of the declaration. Therefore this writ petition also deserves to be dismissed. Even otherwise, this writ petition also deserves to be dismissed on the ground that the same has been filed after the passing of the award.

(Para 26)

O. P. Goyal, Sr. Advocate with Ranjeeta Gill, Advocate for the petitioners in C.W.P. No. 2513, 5928, 9757 of 2004.

Amit Jain, Advocate, for the petitioners in C.W.P. No. 941 of 2004.

Rakesh Nagpal, Advocate, for the petitioners in C.W.P. No. 12968 of 2004.

Pritam Saini, Advocate, for the petitioners in C.W.P. No. 20133 of 2005.

J. K. Goel, Advocate, for the petitioners in C.W.P. Nos. 976 & 12548 of 2006.

Kamal Sehgal, Addl. A. G., Haryana, for the respondents

AUGUSTINE GEORGE MASIH, J.

(1) By this order, we propose to dispose of C.W.P. Nos. 941, 2513, 5928, 9757, 12968 of 2004, 20133 of 2005, 976 and 12548 of 2006 as they arise out of the same acquisition proceedings,—*vide* which the land of the petitioners has been sought to be acquired by the respondent-State.

(2) Notification dated 2nd December, 2002 was issued by the Government under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) for acquiring 55 acres, 7 kanals and 11 marlas of land at public expense for public purposes, namely, for construction of building of police lines and its staff quarters at village Patti Kayasth Seth, Tehsil and District Kaithal. In these writ petitions, most of the petitioners preferred objections under Section 5-A of the Act and on consideration

of the same declaration under Section 6 of the Act was issued on 5th November, 2003 which was published in the Haryana Government Gazette on 18th November, 2003. Notice under Section 9 of the Act was issued to the petitioners and they were directed to appear before the Land Acquisition Collector on 3rd November, 2005 which according to the petitioners was received by them on 4th November, 2005. Thereafter, another notice under Section 9 of the Act was issued which was served on the petitioners on 9th November, 2005 whereby the petitioners were directed to appear before the Land Acquisition Collector on 17th November, 2005 on which date, the award was announced by the Land Acquisition Collector-respondent No. 2. This acquisition has been challenged by the petitioners by way of the above-mentioned writ petitions wherein various grounds have been taken by them in their petitions which are being taken up for consideration.

(3) In C.W.P. No. 941 of 2004, it is the contention of the counsel for the petitioners that the petitioners are the owners in possession of the land in question. They had set up a poultry farm for 20,000 birds over part of the land. This poultry farm has been constructed on scientific basis which consists of poultry sheds, cage system shed, water tanks, egg store, feed store, office block and labour quarters. All the construction on the poultry farm is of 'A' class quality. The petitioners preferred objections under Section 5-A of the Act wherein they had pleaded the above facts. Apart from that, it had been pleaded that the acquisition has been done in a haphazard manner and a policy of pick and choose has been adopted by the respondent-Government while acquiring the land in question. Land belonging to influential persons, though similarly situated, has not been acquired whereas the land of the petitioners has been acquired. He has referred to the site plan to contend that certain factories, industrial sheds and rice mill were left out of acquisition. It has further been pleaded that the petitioners will suffer a great financial loss and would lose their livelihood if their land is allowed to be acquired. On this basis, prayer for quashing of the acquisition proceedings has been made.

(4) Per contra, counsel for the respondents has submitted that the land is being acquired for building police lines and its staff quarters. Poultry farm cannot be adjusted in the planning. The petitioners would be adequately compensated. That apart, the land of the petitioners falls within the planned

area and, therefore, cannot be left out of acquisition. As regards the contention of the counsel for the petitioners regarding non-acquisition of certain factories and industrial sheds, counsel submits that the said properties were not acquired as they were running units and were situated on one side of the land and did not disturb the plan. Further, acquiring the same would carry grave financial implications on the Government and when the required land was available in one block, the same would be acquired.

(5) We have heard counsel for the parties and are in agreement with the contention as raised by the counsel for the respondents. There can be no dispute that a poultry farm would be a nuisance for the purpose the land is being acquired i.e. for construction of police lines and staff quarters. Not only would it generate a lot of filth but also insects and flies, apart from emitting foul odour. That apart, the land of the petitioners falls in between the land sought to be acquired. It does not fit into the planning and would defeat the purpose for which the same is being acquired. Therefore, the plea of the counsel for the petitioners cannot be sustained and the writ petition deserves to be rejected.

(6) In C.W.P. No. 2513 of 2004, counsel for the petitioner has submitted that the small scale industry set up by the brother-in-law of the petitioner under the rural industry scheme has not been left out of acquisition by the respondents. The petitioner is owner in possession of land measuring 1 kanal 13 marlas which is adjacent to the land of the factory of her brother-in-law where staff quarters are built and has a residential building where five families of the workers of the factory are housed. It being a constructed area, deserves to be released as per the policy of the Haryana Urban Development Authority hereinafter referred to HUDA issued *vide* letter dated 26th June, 1991 (Annexure P-17). Counsel, on this basis, prays for quashing of the acquisition on the ground of discrimination and as per the policy.

(7) In response to the submissions made by the counsel for the petitioner, it has been submitted by the counsel for the respondents, while referring to the site plan attached with the writ petition, that the land of the petitioner is required for easy access to the police lines. The objections filed by the petitioner were duly considered by the respondents but the same were not accepted despite recommendation of the Land Acquisition Collector for release of the same.

(8) As regards the policy of HUDA dated 26th June, 1991 (Annexure P-17) reliance whereof has been made by the counsel for the petitioner praying for release of the constructed area, he submits that the said policy is applicable to various schemes of HUDA where the land is acquired by it for the said purpose. The present acquisition is neither for HUDA and nor for housing, commercial or industrial purpose but for the construction of police lines and its staff quarters. As per the report of the Land Acquisition Collector under Section 5-A of the Act, it was stated that there were only two rooms and two kitchens. On this basis, he prays for dismissal of the writ petition.

(9) We are in agreement with the contention of the counsel for the respondents. The acquisition has been made in accordance with the requirement and for the purpose for which the notifications have been issued. Objections were duly considered and the policy, reliance whereof has been made by the counsel for the petitioner, for release of constructed area, would not be applicable to the present acquisition as it is meant for the police lines and its staff quarters and not under any HUDA Scheme. The policy, thus, would not be applicable to the case in hand. Further, it is required as per the site plan for easy access to the Police Lines. This writ petition thus, deserves to be dismissed.

(10) In C.W.P. No. 5928 of 2004, counsel for the petitioner has urged that the property of the petitioner is measuring 420 sq. yards and now falls within municipal area. His residential house has an electricity supply connection and is being used by him for his personal residential purpose. He prays that the land deserves to be released on the ground that it is an 'A' class construction and has been constructed prior to the issuance of notification under Section 4 of the Act.

(11) On the other hand, counsel for the respondents while referring to the site plan attached with the writ petition has submitted that the land of the petitioner falls on the opening of the police lines towards Kurukshetra road. It would be an impediment in access to Kurukshetra road in case the land of the petitioner is released from acquisition. It is further the contention of the counsel for the respondents that the construction is a rough one and it hampers the planning of the police lines for which the land is required. The construction violates the rules of the Municipal Act and the Urban Act which being illegal cannot be permitted to remain there. If the

land of the petitioner is released on the ground that there is construction over it, it would amount to regularizing an illegal construction which would not be permissible in law.

(12) On consideration of the contention of the counsel for the parties, we are in full agreement with the arguments raised by the counsel for the respondents and, therefore, do not find any merit in the submissions as raised by the counsel for the petitioner.

(13) In C.W.P. No. 12968 of 2004, counsel for the petitioners has pleaded that the land of the petitioners although a vacant land cannot be used for the purpose for which it is being acquired.

(14) Counsel for the respondents, on the other hand, contends that the land of the petitioners is vacant and is adjoining to the land which is being sought to be acquired. It also falls on the entry to the Kurukshetra road and is just behind the land of the petitioner Vijay Gupta in C.W.P. No. 5928 of 2004. As per the site plan, since it is a vacant land and would be an impediment in access to the Kurukshetra road, the land cannot be released.

(15) We are in full agreement with the submissions made by the counsel for the respondents and, therefore, cannot accept the contention of the counsel for the petitioners especially when the land of the petitioners is being used for agricultural purposes and is a vacant land. Therefore, this writ petition deserves to be dismissed.

(16) Counsel for the petitioner in C.W.P. No. 9757 of 2004, has submitted that the petitioner is the Mohatmim and Muntzin of Mandir Kaisthanwala and in possession of the land of the said Mandir measuring 77 Kanals 8 Marlas. The land of the petitioner is attached to a religious institution whereupon a public school under the name and style of Shitalpuri Public School is proposed to be constructed. The petitioner submitted objections on 10th December, 2002 but the same were rejected as time barred in which it was pleaded that the area is constructed and several houses, school buildings and showrooms are already constructed thereon. The plea of discrimination was also raised as three public schools were situated in the area i.e. Silver Oak Public School, Little Flower School and Tagore Public School which were functioning in the area situated on the National Highway No. 65 where the land of the petitioner was situated. It is, thus, contended by the petitioner that the rejection of the objections

by the Land Acquisition Collector being time barred is totally unjustified. The provisions of Section 5-A of the Act have been violated. Reliance has also been placed on Standing Order No. 28 issued by the Financial Commissioner. According to Clause 9(1) thereof, under no circumstances shall any religious place of worship, shrine, tomb, grave-yard or any immovable property attached to any such institution or any Wakf property be acquired and the boundaries of which are contiguous with the site, the same be acquired compulsorily. He, therefore, contends that as the land belongs to the Mandir, it could not have been acquired. The plea of discrimination has also been raised on the ground that the respondent-State has released Dargah Sheikh Mazar on the ground that the members of general public come to worship the place. He, on this basis, prays for the quashing of the notification issued under Sections 4 and 6 of the Act and the award which has been passed on 17th November, 2005 i.e. during the pendency of the writ petition.

(17) Counsel for the respondent has stated that there is no discrimination with regard to the acquisition of the land of the petitioner. He contends that the land of the petitioners was a vacant land. As per the Jamabandi, the ownership of the land is in the name of Temple Kaisathan Wala. However, when the acquisition proceedings were initiated, there was no temple in existence. Even in the jamabandi record, no entry to this effect has been found. As regards Standing Order No. 28 and Clause 9.1, it is submitted that there being no shrine, dargah or any other religious building proposed to be acquired at the time of issuance of notification under Section 4 of the Act, the said Standing Order and the clause referred to above, would not apply to the case of the petitioner. Further, the land of the petitioner was vacant. He refers to the replication filed by the petitioner wherein photographs have been attached with the writ petition. A perusal of the same would show that these are all recent constructions. As per the objections submitted by the petitioner under Section 5-A of the Act, the same depicts that it is not the stand of the petitioner that the temple is situated in this land nor does this fact finds mention in the pleadings of the writ petition. What has been pleaded in the objections which were preferred under Section 5-A of the Act is that the petitioner wants to build a public school which shows that on the date of acquisition, there was no school in existence.

(18) Counsel for the petitioner is unable to rebut the contention as has been raised by the counsel for the respondents.

(19) In view of the above, we are of the considered view that the contentions as raised by the counsel for the petitioner cannot be accepted and accordingly, the writ petition deserves to be dismissed.

(20) As regards C.W.P. No. 20133 of 2005, the same having been filed after the passing of the Award would not be maintainable on this ground alone. Further, the fact that the land of the petitioners is vacant, would also go against the petitioners. However, a separate ground has been pleaded by the petitioners in the writ petition wherein the award dated 17th November, 2005 has been challenged on the ground that the prior approval of the Government had not been obtained by the Land Acquisition Collector as mandated under first proviso to Section 11(1) of the Act. In support of his contention, reliance has been placed by the counsel for the petitioners on a Division Bench judgment of this Court in the case of **Suresh Chand and others versus State of Haryana and another (1)**. It is further the contention of the counsel for the petitioners that the award having been passed in violation of the provisions of the Act, the same cannot be sustained and deserves to be quashed.

(21) In response to the contention raised by the counsel for the petitioners, counsel for the respondent has produced a letter dated 31st October, 2005 issued by the Financial Commissioner and Principal Secretary to Government of Haryana, Home Department wherein the Government has accorded sanction to release of the amount as per the proposed award for payment of acquisition of land for the construction of Police Lines, Kaithal whereas the award is dated 17th November, 2005.

(22) In view of the above, the contention of the counsel for the petitioners cannot be accepted.

(23) Counsel for the petitioners has submitted that declaration under Section 6 of the Act was issued on 5th November, 2003, which was published in the English and Hindi Newspapers on 11th November, 2003 whereas the said declaration was published in the Haryana Government Gazette on 18th November, 2003. He contends that as per Section 6(2) of the Land Acquisition Act, every declaration shall be published in the Official Gazette and in two daily newspapers having circulation in the locality

in which the land is situated, out of which at least one should be in regional language and the Collector shall cause public notice at the instance of such declaration to be made at the convenient places in the said locality. He contends that as per the Scheme of the Act, publication in the Official Gazette should precede publication in newspapers and even public notice by the Collector in the locality thereafter. He contends that since publication in the newspaper has come on 11th November, 2003 i.e. prior to the publication in the Haryana Government Gazette i.e. 18th November, 2003, Section 6(2) of the Act having been violated which is *pari materia* to Section 4(1) of the Act which has been held to be mandatory, the acquisition proceedings deserve to be quashed. In support of the contention counsel for the petitioners has placed reliance upon a Full Bench Judgment of this Court in the case of **Kashmiri Lal and others versus State of Punjab and another (2)**. Another contention raised by the counsel for the petitioners is that the declaration under Section 6 of the Act is dated 5th November, 2003 and, therefore, award should have been passed on or before 4th November, 2005 and as the award has been passed on 17th November, 2005, the same cannot be sustained.

(24) To this, the counsel for the respondents has responded by submitting that it is an admitted position that declaration under Section 6 of the Act was issued on 5th November, 2003 which was duly published in Haryana Government Gazette on 18th November, 2003 and the proclamation of the said notification was made in the locality and rapat No. 149 dated 30th November, 2003 was entered in Rojnamacha Waqayati of Patwari Halqa. Even if the date of publication in the Official Gazette is taken to be the date of declaration, the award announced on 17th November, 2005 was within the limitation prescribed. He refers to Section 6(2) of the Act wherein it has been stated that the last date of such publication i.e. in Official Gazette or Newspapers or in the locality and giving of such public notice being hereinafter referred to as the date of publication of declaration states that the last date of any of these three modes of publication would be considered for calculating the period within which the award can be passed.

(25) The above submissions as made by the counsel for the parties when analysed, leave no manner of doubt that the award was passed within the period as prescribed under Section 11 of the Act. The Hon'ble Supreme

Court in the case of **Mohan Singh and others versus International Airport Authority of India and others (3)**, and **Krishi Utpadan Mandi Samiti versus Makrand Singh (4)**, has held that Section 6(2) of the Act relates to publication of the declaration under Section 6(1) of the Act. It is intended to compute the period of limitation as provided under Section 11(a) of the Act. No limitation for publication of declaration under Section 6(2) of the Act has been prescribed under the Act and the period prescribed under first proviso to clause (ii) of sub-section (1) of Section 6 is only for making declaration and not for publication (**S. H. Rangappa versus State of Karnataka and others (5)**). The Hon'ble Supreme Court has gone to the extent of holding that omission to publish the declaration issued under Section 6(1) of the Act and the substance thereof in the locality would not render the declaration under Section 6 of the Act invalid. Section 6(2) of the Act has been held to be directory and not mandatory although language is *pari materia* with Section 4(1) of the Act is mandatory (**State of Haryana and another versus Raghubir Dayal, (6)**). The Hon'ble Supreme Court in its latest judgment in the case of **Dahyabhai Ranchhoddas Dhobi and another versus State of Gujarat and others (7)**, has held that award under Section 11 of the Act is to be made within two years from the declaration under Section 6(2) of the Act and the commencement date for calculation of limitation, would be the date of last publication of the declaration. For coming to this conclusion, the Hon'ble Supreme Court has relied upon its earlier judgments in the case of **Krishi Utpadan Mandi Samiti versus Makrand Singh, (supra)**; **Eugenio Misquita versus State of Goa, (8)**; **S. H. Rangappa versus State of Karnataka; (supra)** and **Kunwar Pal Singh versus State of Uttar Pradesh (9)**.

(26) In view of the above, the contention of the counsel for the petitioners that the date of notification i.e. 5th November, 2003 has to be taken as the date of commencement of the period of limitation for calculation of limitation cannot be sustained but even if the date of publication in the Official Gazette is taken into consideration, which was 18th November, 2003 and the award is dated 17th November, 2005 still in the light of the

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- (3) (1997) 9 S.C.C. 132
 - (4) (1995) 2 S.C.C. 497
 - (5) (2002) 1 S.C.C. 538
 - (6) (1995) 1 S.C.C. 133
 - (7) (2010) 7 S.C.C. 705
 - (8) (1997) 8 S.C.C. 47
 - (9) (2007) 5 S.C.C. 85

above judgments, the commencement of date of calculation for limitation would start on 31st November, 2003 when the proclamation of the declaration was made in the locality. The other contention of the counsel for the petitioners that the publication in the Official Gazette should precede the publication in the newspaper also cannot be sustained in the light of the fact that the Hon'ble Supreme Court has held that Section 6(2) of the Act provides for the mode of publication. A perusal of Sections 4 and 6 of the Act would show that the word "notification" is specifically used in Section 4(1) of the Act whereas no such word is found in Section 6 of the Act where the Act deals with the declaration which does not mandate notification but mere publication of the declaration. Therefore, this writ petition also deserves to be dismissed. Even otherwise, this writ petition also deserves to be dismissed on the ground that the same has been filed after the passing of the award in the light of the judgments of the Hon'ble Supreme Court in the cases of **Municipal Corporation of Greater Bombay versus Industrial Development and Investment Company (P) Limited** (10) **Star Wire (India) Ltd. versus State of Haryana** (11); **C. Padma versus Deputy Secretary to the Government of Tamil Nadu**; (12) **Municipal Council, Ahmednagar versus Shah Hyder Beig**; (13) and **M/s Swaika Properties Pvt. Ltd. versus State of Rajasthan** (14).

(27) C.W.P. No. 976 of 2006 as also C.W.P. No. 12548 of 2006 deserve to be dismissed on the ground that the same were preferred after the passing of the award. Apart from this, petitioners in C.W.P. No. 976 of 2006 have purchased the land after the issuance of notification under Section 4(1) of the Act. They would thus, not be entitled to challenge the legality of the acquisition but at best can claim compensation. In this regard, reference to the judgments of the Hon'ble Supreme Court can be made in the cases of **Star Wire (India) Ltd. versus State of Haryana and others (supra)**, **Gurmukh Singh versus State of Haryana** (15) **U. P. Jal Nigam versus Kalra Properties (P) Ltd.** (16)

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- (10) (1996) 11 S.C.C. 501
 - (11) (1996) 11 S.C.C. 698
 - (12) (1997) 2 S.C.C. 627
 - (13) (2000) 2 S.C.C. 48
 - (14) JT 2008 (2) S.C. 280
 - (15) 1996 S.C.C. (CrI.) 505
 - (16) 1996 (3) S.C.C. 124

Meera Sabhni *versus* Lt. Governor of Delhi and others (17) and Shanti Sports Club and another *versus* Union of India and others (18).

(28) In C.W.P. No. 12548 of 2006, the land which is being sought to be acquired is a vacant land and, therefore, no ground for release of the same is made out.

(29) In view of the above, we do not find merit in any of the writ petitions aforementioned and, therefore, dismiss the same. There shall be no order as to costs.

(30) A photostat copy of this order be placed on the files of connected cases.

R.N.R.