
regularisation of her services. Admittedly, the post has continued to exist for a long time. The scheme itself was promulgated in the year 1979. The petitioner has been in position since the year 1992. The post is still needed. In this situation, we consider it appropriate to direct that the petitioner's case for regularisation on the post held by her shall be considered within three months. The respondents shall fix an appropriate scale of pay and place her in that scale. The emoluments shall not be below Rs.5500 per month as mentioned above.

(12) Mr. V.K. Sharma, counsel for the respondent—Union of India points out that the posts are sanctioned under a scheme. Therefore, the benefit of regularisation should not be given. However, on being asked, the counsel has admitted that the number of Community Polytechnics was initially fixed at 35. It has now risen to about 400. This only proves the continuing need for the Community Polytechnics and the personnel to man the posts. In this situation, it is only fair that the respondents create a regular cadre and place them in a regular service.

(13) The writ petition is allowed in the above terms. The petitioner shall also be entitled to her costs which are assessed at Rs. 10,000.

R.N.R.

Before Jawahar Lal Gupta & N.K. Sud, JJ

M/S HINDUSTAN AUTOMOBILES INDUSTRIES..Petitioner

versus

STATE OF HARYANA AND OTHERS..Respondents

C.W.P. No. 10443 of 1999

2nd February, 2001

Land Acquisition Act, 1894— Ss. 4 and 6— Constitution of India, 1950— Art. 226— Petitioner's land sought to be acquired for the purpose of developing an industrial area— Allegations of mala fides against a Minister incharge of Urban Estates in the State of Haryana— Proposal to develop industrial area where the industrial colony existing— Govt. shifting site to the area where the land of the Minister located— Hearing to petitioner after the publication of the notification in the Govt. Gazette— Non-compliance of the provisions of law— Writ allowed, impugned notifications quashed while holding the acquisition not in public interest.

Held, that according to the original plan the industrial area had to be developed along with Sector 20 in the town of Rohtak. Even the industrial colony and the office of the General Manager, Department of Industries, had been established at that place. Still, all of a sudden a decision was taken to set up the industrial estate at the distance of about 7 Kms. near Sector 37. No record has been produced despite being asked which may indicate as to why the Government had taken the decision to shift the industrial estate from one place to another. The decision was taken in the meeting which was admittedly held under the Chairmanship of the Minister for Urban Estates. In this situation, the inevitable conclusion is that the site for development of industrial estate was fixed in Sector 37 at the instance of the Minister for Urban Estates. Nothing has been produced on record to show that it was in public interest to do so. Resultantly, we cannot escape the conclusion that the power was exercised for an oblique objective.

(Paras 14 and 16)

Further held, that the notification under Section 4 of the 1894 Act was issued on July 9, 1998. The notification under Section 6 of the 1894 Act is dated October 28, 1998. The petitioners according to the respondents were heard through their counsel on December 29, 1998. Apparently, the hearing was after the notification had already been published in the Government Gazette. It is clear that the State Government claims to have completed every thing between July 9, 1998 and October 28, 1998. Thus, the objections were not considered in accordance with the provisions of law and that the acquisition was not made to promote any public interest.

(Paras 17 and 18)

M.S. Sethi, Sr. Adv. With Amit Singh Sethi, G.M. Umair and
Kulbir Singh Narwal, Advs. for the Petitioner

Surya Kant, A.G. Haryana with Ms. Palika Monga, AAG,
Haryana for respondents Nos. 1 and 2.

Ravinder Chopra, Adv. for respondent No. 3

JUDGMENT

Jawahar Lal Gupta, J (Oral)

(1) These eleven petitions are directed against the notifications dated July 9, 1998 and October 28, 1998 issued under Sections 4 and 6 respectively of the Land Acquisition Act, 1894. The petitioners allege that the land was acquired for the ostensible purpose of developing an

industrial area at Rohtak but the real purpose was to promote the personal interest of Seth Sri Krishan Dass, the then Minister for Urban Estates. They pray that these notifications be quashed.

(2) Counsel for the parties have referred to the facts as appearing on the report of C.W.P. No. 10443 of 1999. These may be briefly noticed.

(3) On July 9, 1998 the Haryana Government issued a notification under Section 4 of the Act expressing its intention to acquire land for the purpose of developing "industrial area at Rohtak as shown in the development plan under the Haryana Urban Development Authority Act, 1977....". The area measured 138.25 acres. The petitioner filed objections under Section 5-A of the Act alleging *inter-alia* that the land was being acquired "for the fulfilment of the self interest of a highly placed individual" and not for promoting any public interest. It was categorically pointed out that the proposed acquisition "is being done in a capricious manner for the selfish gain of some highly placed politician having land in the said locality with the *mala fide* intention to cause loss to the petitioner....". On October 28, 1998 the notification under Section 6 of the Act was issued. A small portion of the land- (less than 8 acres) was excluded from acquisition. The notification under Section 6 of the Act pertained to 129.73 acres of land.

(4) The petitioner alleges that Seth Shri Krishan Dass, the third respondent, was a Cabinet Minister in the Haryana Government in the year 1998. He was the Minister Incharge of the Department of Urban Estates. He alongwith his family members owned about 80 acres of land near the area in dispute. It has been further alleged that the industrial area was being developed in Sector 20 where the industrial colony also existed. However, this proposal to develop the industrial area in Sector 20 was shelved and the site was shifted to the area near Sector 37 where the land of the Minister is located. This was done despite the fact that the proposed site was at a distance of 7 kms. from the existing industrial colony and the office of the Manager, Industries Department, in Sector 20. The petitioner maintains that its land was being acquired on account of political rivalry. The third respondent, being a Minister from the Haryana Vikas Party, was misusing his power to harm his political rivals and to promote his personal interest. The petitioner maintains that the impugned acquisition is totally arbitrary and *mala fide*. The petitioner also alleges that the objections filed under Section 5-A of the Act were not considered by the appropriate authority but were disposed of "without any

application of mind in a mechanical manner". On these premises, it is maintained that the impugned notifications deserve to be quashed.

(5) Even though serious allegations were levelled against the Minister, no officer of the State Government viz. Secretary or Joint Secretary has filed any reply. In fact, the written statement on behalf of the State Government and other official respondent has been filed by Mr. Manjit Mann, the Land Acquisition Collector, Urban Estates, Haryana, Faridabad. It has been averred that the petitioner has no *locus-standi* to challenge the acquisition. The objections filed by the petitioner were considered. An opportunity of hearing was given. The counsel Mr. B.S. Katra was heard on 29th December, 1998. Thereafter, a report was made by the Land Acquisition Collector. Thus, the objections raised by the petitioner had been "taken into consideration before publication of the notification under Section 6 of the Act" It has been further averred that the award was announced on 12th February, 1999. On merits, it has been pleaded that the allegations of misuse of public authority are false. The petitioner is only entitled to the compensation on account of acquisition of land. The political rivalry "has nothing to do with the present acquisition proceedings". In reply to para 8(iii) it has been stated that "there was no proposal to acquire land for Industrial Area in Sector 20, adjoining the Industrial Colony at the time of Notification, under Section 4 of the Act. As a matter of fact it is only the Govt. who has to decide as to which land is suitable and viable for the particular public purpose. In the present case as well, the decisions was taken to acquire the land in question after considering of all *pros and cons* of the existing circumstances". On these premises, it has been prayed that the writ petition deserves to be dismissed.

(6) A separate reply has also been filed by Seth Sri Krishan Dass, the then Minister of Urban Development. It has been averred that the acquisition "was done with a motive of public interest so that people will get land to establish their business by making it industrial, area....The land acquired was only for public purpose and there was no interest of any individual". He has further averred that "the answering respondent has not been benefitted in any way. It is submitted that as and when Government decides to acquire land for public purpose, a high level committee is constituted and after receiving the report, further proceedings for acquisition are carried out". The petitioners' allegation that the third respondent and his family members owned about 80 acres to land contiguous to the area involved has been denied. It has further been averred that the land" of answering respondent faced only little part of land acquired. There are other

number of land owners whose land fall near the land acquired". The respondent maintains that the land was acquired to promote public interest and not on account of political rivalry.

(7) The petitioner has filed separate rejoinders to the written statements filed on behalf of the respondents. Detailed reply has been filed to answer the preliminary objections as well as to show the lack of *bona fides* on the part of the authorities. It has been especially pointed out that the State Government itself had lodged a report against the third respondent alleging that he was guilty of offences under Sections 420/406/409/467/468/471/122 IPC. and Section 13(1) of the Prevention of Corruption Act, 1980. Even, details of the land owned by the third respondent and his brothers have been given along with the copies of the relevant documents from the revenue record to show that they own 73.8 acres contiguous to the area in dispute. It has also been pointed out that the allegations made by the petitioner and denied on behalf of the State Government are actually supported by the report lodged by the State itself.

(8) These are broadly the pleadings of the parties.

(9) Counsel for the parties have been heard.

(10) Mr. Mohinder Jit Singh Sethi, learned counsel for the petitioners in these cases, has contended that the action is a fraud on the power. It was a colourable exercise of power. The power was used for an oblique purpose and not to promote public interest. The objections raised by the petitioners under Section 5-A of the Act were not considered. The notification under Section 6 of the Act was issued mechanically. Still further, it has been pointed out that setting up the industrial area near Sector 37 which was predominantly a residential colony would not promote public interest.

(11) The claim made on behalf of the petitioners has been controverted by Mr. Surya Kant, the Advocate General, Haryana.

(12) It is the admitted position that the State Government has registered a criminal case against the third respondent and certain other persons. We are informed by the learned Advocate General that the investigation has almost been completed and that the papers are about to be presented to the competent Court after complying with the necessary formalities. Since the matter is to be examined by the Court, we shall not dwell upon details of the criminal case. However, it may only be noticed that one of the allegations made by the State

Government itself that the third respondent had "got land acquired for Industrial Estate on the Gohana-Rohtak Road through the agency of HUDA. Near this sector, there is substantial land belonging to Seth Sri Krishan Dass and also a factory. HUDA provided sewerage, roads, lights and other such facilities around the land of Seth Sri Krishan Dass. Special arrangement was got made for the inauguration of the 'Kothi' of Seth Sri Krishan Dass. The HUDA contributed substantially in the construction of the said 'Kothi' inasmuch as Seth Sri Krishan Dass as the minister-in-charge of HUDA".

(13) These allegations are self-eloquent. Still further, a perusal of the complaint which was made by the State Government against respondent No. 3 indicates that a clear allegation had been made that the land was got acquired by him for establishing an industrial estate with the object of enhancing the value of his own land. At this stage, we do not consider it necessary to go into the details of this matter as that would lie exclusively within the province of the court trying the case. Yet, the allegations give a clear lie to the written statement filed on behalf of the respondent-State and the Land Acquisition Collector inasmuch as these show that the land was not being acquired for promoting public interest but for serving a private cause. At this stage, we do not consider it necessary to say anything more.

(14) Another fact which stares us in the face is that according to the original plan the industrial area had to be developed along with Sector 20 in the town of Rohtak. Even the industrial colony and the office of the General Manager, Department of Industries, had been established at that place. Still, all of a sudden a decision was taken to set up the industrial estate at the distance of about 7 kms. near Sector 37. Why? There is no answer. No record has been produced despite being asked which may indicate as to why the Government had taken the decision to shift the industrial estate from one place to another. Mr. Surya Kant submits that the allegation has been denied in para 8 (iii) of the written statement. It has been averred that "there was no proposal to acquire land for industrial area in Sector 20....." This averment is clearly belied by the letter dated 21st May, 1997 written by the then Deputy Commissioner, Rohtak, to Mr. Y.S. Malik, the Managing Director, Haryana State Industrial Development Corporation Limited, Chandigarh. A copy of this letter has been placed on record as Annexure P-5 with the writ petition.

(15) A perusal of this letter shows that in the meeting held on 29th April, 1997 "under the Chairmanship of Hon'ble Minister of Town and Country Planning, Haryana" a revised draft development plan

was approved. According to the revised plan the site fell in Sector 37. What was revised? What was the original plan? The respondents are not in a position to give any answer. Apparently, under the original plan the industrial area was slated to be in a different sector. By the decision on 29th April, 1997 the site was shifted to Sector 37. This is the place where the land was acquired through the impugned notifications.

(16) This single fact clearly establishes the shifting of the site to Sector 37. The decision was taken in the meeting which was admittedly held under the Chairmanship of respondent No. 3. How was it likely to promote public interest? There is no indication in the pleadings. None has been given at the hearing. No record has been produced despite being asked. In this situation, the inevitable conclusion is that the site for development of industrial estate was fixed in Sector 37 at the instance of respondent No. 3. Nothing has been produced on record to show that it was in public interest to do so. Resultantly, we cannot escape the conclusion that the power was exercised for an oblique objective.

(17) Mr. Sethi has also contended that the objections filed by the petitioners under Section 5-A of the Act had not been considered in accordance with law. The claim made on behalf of the petitioners has been controverted by the respondents. In the written statement it has been averred that the petitioners were duly heard through the counsel on 29th December, 1998. Could it be so? It is the admitted position that the notification under Section 4 of the Act was issued on 9th July, 1998. The notification under Section 6 of the Act is dated 28th October, 1998. The petitioners according to the respondents were heard through their counsel on 29th December, 1998. Apparently, the hearing was after the notification had been already published in the Government Gazette. Mr. Surya Kant submits that probably there is a typographical error. Then what is the correct date? Learned counsel is not able to indicate anything. In any event, it is clear that the State Government claims to have completed every thing between 9th July, 1998 and 28th October, 1998. The averment in the written statement being clear and categorical shows that the claim that the petitioners were heard before the notification under Section 6 was issued is not supported by any material on record.

(18) In view of the above, it is clear that the objections were not considered in accordance with the provisions of law and that the acquisition was not made to promote any public interest. Resultantly,

the impugned notifications cannot be sustained. These are, consequently, quashed.

(19) The writ petitions are allowed with costs.

R.N.R.

Before G.S. Singhvi & Nirmal Singh, JJ

SMT. PUSHPA DEVI..Petitioner

versus

STATE OF HARYANA & OTHERS..Respondents

C.W.P. No. 6645 OF 2000

25th May, 2000

Haryana Aided Schools (Security of Service) Act, 1971—Haryana Aided Schools (Security of Service) Rules, 1974-Rls.2h, 5, 6, and 10—Circular, dated 23rd July, 1957 issued by the Government of Haryana—Appointment as JBT teacher in a private aided school—Claim for grant of higher pay scale on the basis of higher qualifications—Rejection of—Neither the 1971 Act nor the 1974 Rules provide for grant of higher pay scale to the teachers of the privately managed schools on their acquiring the higher qualification—No rationale or justification to grant higher pay scale to a JBT teacher prescribed for a different/higher post—The Supreme Court & the High Court granting higher pay scales in some cases after relying upon the circulars/instructions and without examining the recruitment and pay rules—These decisions cannot be treated as laying down a proposition of law—Petitioner not entitled to the benefit of higher pay scale—Writ dismissed.

Held, that the reasons assigned by the Director of Secondary Education, Haryana for declining petitioner's prayer for grant of higher grade can neither be termed as arbitrary nor extraneous nor it can be said that the petitioner has been discriminated. The Circular dated 23rd July, 1957 was in existence when Legislature of Haryana enacted the 1971 Act and the State Government had framed the 1974 Rules. If the Legislature and its delegate wanted to confer the benefit of higher pay scale/grade to the teachers of the private aided schools who possessed qualifications higher than those prescribed for the post at the time of recruitment or who acquired such qualifications after joining the service then they would have incorporated the Circular dated 23rd July, 1957 either in the 1971 Act or in the 1974 Rules. However, the fact of the