

CASE NO.:
Appeal (civil) 5516 of 2001

PETITIONER:
SUBE SINGH & ORS.

Vs.

RESPONDENT:
STATE OF HARYANA & ORS.

DATE OF JUDGMENT: 17/08/2001

BENCH:
A.P. Misra & D.P. Mohapatra

JUDGMENT:

WITH
Civil Appeal Nos.5517-5530 of 2001
(Arising out of SLPÂ© Nos.11722-11723/1999, SLP Â©
No.2199/2000, SLP Â© No.18228/1999, SLP Â© No.3351-
3352/2000, SLP Â© No.4857/2000 & SLP Â© No.12089/2000,
SLP Â© No.16786/1999, SLP Â© No.16822/1999, SLP Â©
Nos.17971-17973/1999 and SLP Â© No.13954/2001

J U D G M E N T

D.P.MOHAPATRA, J.

Leave granted.

These appeals filed by the writ petitioners are directed against the judgment rendered by the Punjab and Haryana High Court on 13th August, 1998 in which eight writ petitions filed by the appellants and others were decided. Six out of the eight writ petition, Nos.4955, 6036, 4091, 8059, 5994 and 5174 of 1997 were dismissed while Writ Petition Nos.5160 and 6012 of 1997 were allowed and the notification under section 6 of the Land Acquisition Act, 1894 (for short the Act), insofar as it related to the petitioners in those two cases was quashed.

The High Court by a separate judgment rendered on 8.4.1999 dismissed eight other similar writ petitions Nos.16399/96, 15228, 15549 of 1997, 403, 3524, 3677, 4752 & 15511 of 1998. In another judgment rendered on 17.2.2000 the High Court dismissed the Civil Writ Petition No.8275/1997.

Since the relevant facts and the grounds of challenge against the judgments are similar in all these cases they are being disposed of by this common judgment. For convenience we shall refer to the facts in the first batch of cases referred to above.

The State of Haryana issued the notification dated 26th May, 1995 under Section 4 of the Act expressing its intention to acquire an area of 193.37 acres for the purpose of development, utilisation for residential, industrial and

commercial purposes for pocket of Sectors 1 & 2 in the Town Bahadurgarh, district Rohtak by the Haryana Urban Development Authority. The appellants claiming to be the owners /occupiers of certain lands proposed to be acquired filed their objections against the acquisition under section 5A of the Act. They questioned the validity of the notification issued under section 4 of the Act on several grounds including non-compliance with the mandatory provisions regarding publication of the notification giving wide publicity in the locality, denial of opportunity of personal hearing under section 5A of the Act, non-application of mind by the concerned authorities on the points taken in the objection petitions filed by them that they had built structures for residential and/or commercial purposes on the lands owned by them and according to the policy decision of the State Government such lands are to be excluded from acquisition. The Land Acquisition Collector considering the objection petitions filed by the appellants, other than appellant No.2 Ram Kumar Gupta, recommended to the State Government for exclusion of the lands on the ground that there were structures standing on the same. The State Government, however, did not accept the recommendation and stood by the decision to acquire the land with the structures thereon. Notifications were issued under sections 6 and 9 of the Act in due course.

In the writ petitions filed by the appellants the objections taken before the Land Acquisition Collector were reiterated and the High Courts intervention was sought for releasing the lands on the ground of invalidity of the Notification under section 6 of the Act and also on the ground for exclusion of the land with structures from acquisition.

The High Court, on examination of the records produced before it and on consideration of the contentions raised by counsel appearing for the parties, rejected the contention relating to denial of opportunity of hearing on the objections filed by the petitioners under section 5A of the Act excepting the two writ petitions noted earlier in which the Court held that reasonable opportunity of hearing had not been granted to the petitioners. Regarding the contention of release of the lands with structures thereon from acquisition the High Court was not inclined to accept the same holding that there is no bar under the Act or in any law for acquisition of land with a structure standing on it, by the State Government. On these findings the High Court allowed the two writ petitions and dismissed the other six petitions as noted earlier. It is relevant to note here that the High Court had noted the contention on behalf of the petitioners that some other land included in the notification on which there stood built up structures have been excluded by the State Government while the writ petitioners were not extended similar treatment, but neither discussed the point nor recorded a finding on the same.

The main thrust of the arguments advanced by the learned counsel for the appellants in these appeals was that the decision of the State Government not to accept the prayer of the petitioners for exclusion of their property from acquisition is arbitrary and discriminatory inasmuch as in the case of owners of other lands lying within the area notified who had sought exclusion of their property on the ground of existing structures the prayer was accepted and the lands were excluded from acquisition. The learned counsel for the appellants referring to the map showing different plots with

structures in the area notified pointed out how lands lying close to the lands of the appellants have been excluded from acquisition while the prayer of the appellants has been turned down.

Shri Mahabir Singh, learned counsel appearing for the State of Haryana contended that the request of the appellants for exclusion of their property from acquisition was not accepted since the constructions on their lands were either B class or C class constructions whereas the lands which were excluded from the acquisition had A class constructions on them. This contention was also refuted by learned counsel appearing for the respondents on the ground that no such principle was followed uniformly and some of the appellants had pucca structures having the quality of A class construction.

In the counter and the note of submission filed on behalf of the appellants it is averred, inter alia, that the Land Acquisition Collector on considering the objections filed by the appellants had recommended to the State Government for exclusion of the properties of appellants 1 and 3 to 6 and the State Government had not accepted such recommendations only on the ground that the constructions made by the appellants were of B or C class and could not be easily amalgamated into the developed colony which was proposed to be built. 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 A class structures was feasible and possible while those of B and C class structures was not possible. It is not the case of the State Government and also not argued before us that there is no policy decision of the Government for excluding the lands having structures thereon from acquisition under the Act. Indeed, as noted earlier, in these cases the State Government has accepted the request of some land owners for exclusion of their properties on this very ground. It remains to be seen whether the purported classification of existing structures into A, B and C class is a reasonable classification having an intelligible differentia and a rational basis germane to the purpose. If the State Government fails to support its action on the touch-stone of the above principle then this decision has to be held as arbitrary and discriminatory. It is relevant to note here that the acquisition of the lands is for the purpose of planned development of the area which includes both residential and commercial purposes. That being the purpose of acquisition 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 or commercial) should be demolished. At the cost of repetition, it may be stated here that no material was placed before us to show the basis of classification of the existing structures on the lands proposed to be acquired. This assumes importance in view of the specific contention raised on behalf of the appellants that they have pucca structures with R.C.roofing, Mozaic flooring etc. No attempt was also made from the side of the State Government to place any architectural 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 the appellants could not be amalgamated into the plan.

On the facts and circumstances of the case revealed from the records, we are persuaded to accept the contention raised on behalf of the appellants 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. We are of the view that such action of the Government is arbitrary and discriminatory. Unfortunately, the High Court failed to judge the cases in its proper perspective.

In the result, the appeals are allowed. The judgments under challenge are set aside, the orders passed by the State Government rejecting the representation of the appellants are quashed. The Secretary, Urban Estates Department, State of Haryana, respondent no.1 herein, is directed to consider the objection petitions filed by the appellants for exclusion of their properties from the acquisition and pass appropriate order excluding such lands having structures on them excepting any land which is required for construction of a road or hospital. Respondent no.1 shall give opportunity of hearing to the appellants before taking the decision. The exercise shall be completed expeditiously if possible within three months. There will, however, be no order for costs.

.J.
(A.P.Misra)

.J.
(D.P.Mohapatra)

August 17, 2001