

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.9386 of 2010

Date of Decision: 28.02.2011

Birpal & Ors.

....petitioners

Versus

State of Haryana & anr.

.....respondents

**CORAM: HON'BLE MR.JUSTICE JASBIR SINGH  
HON'BLE MR.JUSTICE RAKESH KUAMR GARG**

Present: Mr.Sudhir Aggarwal, Advocate  
for the petitioners

Ms.Palika Monga, DAG Haryana

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**JASBIR SINGH, J.(ORAL):**

This writ petition has been filed with a prayer to quash a notification issued under Section 4 of the Land Acquisition Act, 1894(in short 'the Act') on 07.09.2007(P-2) proposing to acquire 19 kanals of land situated in the revenue estate of village Chandhut, Tehsil and District Palwal, for a public purpose namely construction of a police station.

Further challenge has been made to a declaration issued under Section 6 of the Act on 19.01.2009, showing intention of the respondents to acquire the above said land. Still further, an Award passed on 05.02.2010 has also been impugned in this writ petition.

It is not in dispute that petitioners are the owners of land measuring 27K-15M out of the land under acquisition. Rest of the land about 7K was the ownership of one named Anil Garg. So far as the procedural aspect of publication of the notifications issued under Sections 4 and 6 of the Act, is concerned, there is no challenge to the same. It is

the primary grievance of counsel for the petitioners that before deciding the objections filed by them under Section 5-A of the Act, no opportunity of hearing was granted to them as is mandatory under the Act, which would amount to violation of their fundamental right of hearing and on account of which acquisition cannot be sustained. To support the above said contention, reliance was placed upon an order passed in **Civil Writ Petition No.18821 of 2009 titled as "Anil Garg versus State of Haryana and others"** decided on 07.04.2010 by a Division Bench of this Court.

We have heard learned counsel for the parties.

When notice of motion was issued following contention of learned counsel for the petitioners was noticed by the court on 20.05.2010.

"Learned counsel for the petitioner contends that the issue raised in the instant petition is squarely covered by the ratio of a judgement passed by this Bench in CWP No.18821 of 2009(Anil Garg v.State of Haryana and others), wherein the impugned notifications in respect of the land of the petitioners in that case have been quashed."

In response to notice issued, reply has been filed in the writ petition. Regarding non grant of opportunity of hearing to the petitioners, in paragraph No.6 of the writ petition, it was stated as under:

That the provisions of Section 5-A of the Act requires that the Collector besides granting opportunity of being heard to make enquiries about the land under acquisition and make his report to the Government. The petitioner was neither given any opportunity of hearing nor being heard on the objections filed by the petitioner. It was obligatory on the Collector to have made enquiries about the land proposed to be acquired and report to the Government

about the same. Had the collector granted opportunity of hearing to the petitioner or made enquiries about the land of the petitioner, the land of the petitioner would have been recommended for the release of the land from the acquisition. In the manner, the Collector has failed to discharge the statutory duty cast on him under the Act. It is submitted that it was only under the Right to Information Act, the petitioners came to know about the proceedings dated 29.07.2008 with regard to hearing of the objections, however, the respondent No.2 had never served any notice in this regard."

In response to the above said averment made, in the written statement filed at the instance of Land Acquisition Collector(respondent No.2), it was stated as under:

" That in reply to para No.5 of the writ petition, it is submitted that the objections under Section 5-A of the Act filed by the petitioners as well as other land owners and interested persons and same were duly considered by the answering respondent after giving them full opportunity of being heard. It is further submitted that after considering the objections filed by the petitioners and after going through all the facts and circumstances, the land of the petitioners was required to be acquired for public purpose.

"That in reply to para No.6 of the writ petition, it is submitted that objections filed by petitioners as well as other landowners and interested persons have been duly considered and heard in accordance with law. It is further submitted that the decision on the said objections have been taken after taking into consideration all the relevant facts and

after site inspection.”

To know the factual position, we summoned the Land Acquisition Collector, along with the record. Today, in Court, a photo copy of the original proceedings has been brought before us. Perusal of the report of the Land Acquisition Collector, recommending acquisition of land, it is specifically mentioned that objectors/petitioners were heard on 29.07. 2008. Their statement was also recorded which is reproduced in the recommendation made by the Collector on 01.08.2008. Copy of the statement made by the petitioners has also been put on record which is signed by Mr.Birpal, Dinesh and Rajpal. If that is so, we feel that this writ petition was filed by concealing the material facts. Such a litigant who failed to disclose the material facts is not entitled to get any relief from this Court, rather deserves the imposition of costs.

In the reply filed, it is specifically mentioned that opportunity of hearing was granted to the petitioners which fact is now very apparent and clear on perusal of the recommendation made by the Collector on 01.08.2008 and statements of the petitioners recorded on 29.07.2008 by the Land Acquisition Collector.

In view of the facts mentioned above, benefit of the ratio of the judgement in the case of Anil Garg(Supra) cannot be extended to the petitioners. In that case, it was virtually admitted on record that authorities presumed that Mr.Anil Garg has filed the objections after a period of limitation and on account of that objections were not considered which was clear from the recommendations made by the Collector on 01.08.2008. By taking note of the same, the acquisition was quashed qua Anil Garg. Petitioners only woke up when order was passed in favour of Anil Garg on 07.04.2010. This also shows that they were satisfied with the procedure adopted. To the contrary, if they were aggrieved, they should have come immediately to the Court like Anil Garg who came to this Court in the year

2009 i.e.before passing of an Award which pronounced on 05.02.2010. In view of the ratio of the judgement of the Hon'ble Supreme Court in the case of **Swaran Lata versus State of Haryana & Ors. AIR 2010 Supreme Court 1664**, this writ petition having been filed after passing of an Award is also liable to be dismissed.

To the reply filed, no replication was filed by the petitioners. We are satisfied that before disposal of the objections filed by the petitioners under Section 5-A of the Act, opportunity of hearing was granted to them, their statement was recorded and only after that recommendation was made.

In view of the above, this writ petition fails and is dismissed subject to payment of ₹ 20,000/- as costs to be deposited by the petitioners with the Secretary, State Legal Services Authority, Chandigarh within one month failing which the Secretary, State Legal Services Authority, Chandigarh, shall initiate an action to recover the amount.

**(JASBIR SINGH)**  
**JUDGE**

**(RAKESH KUMAR GARG)**  
**JUDGE**

28.02.2011

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