

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 840 OF 2012

[ Arising out of SLP (CIVIL) NO. 11110 OF 2011]

KASHMIR SINGH

Appellant

VERSUS

STATE OF HARYANA & ORS.

Respondents

O R D E R

Leave granted.

This appeal is directed against the order of the Division Bench of the Punjab and Haryana High Court, whereby the writ petition filed by the appellant questioning the acquisition of his land measuring 12 kanals and 18 marlas comprised in khasra no. 51/14/2(1-16), 17/1(3-17), 74/5(8-0), 6/1(4-18), situated at Village Kabri, Tehsil Panipat was dismissed.

The proceedings for the acquisition of large chunk of land including the land belonging to the appellant were initiated by the State Government in 1989. Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') was issued on 10.05.1989.

The appellant filed objections under Section 5-A of

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the Act and opposed the acquisition of his land. He was afforded opportunity of hearing by the Land Acquisition Collector, who submitted report with the following recommendations:

"There is a large industrial unit on the spot. Factory is in working condition. Machines and labour are at work so it is not possible to justify whether the construction is before u/s 4 or after u/s 4. The survey report before u/s-4 regarding the constructed buildings is not available in the office. After the Personal conversation with the nearby people some of them

told that this building is constructed after u/s-4 & some of them told before u/s-4. So in this confusing situation it is relevant to send it to higher authority for acquisition and the higher authorities will decide it after a spot survey."

When the report of the Land Acquisition Collector was placed before the Government, it was decided to get the existence of the building and structure verified from a Committee of Senior Officer. However, without waiting for the required verification, the State Government issued declaration under Section 6(1) of the Act, which was published on 09.05.1990.

The appellant challenged the acquisition of his land on several grounds including the one relating to non-compliance of Section 5-A of the Act. In the counter affidavit filed on behalf of the respondent No. 3, the following averments were made:

"Hearing u/s 5-A was given on 16.04.90. Report on the objection was sent to the Govt. for decision, but the Govt. decided to get the report of the

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Land Acquisition Collector about the building and structures, verified from a committee of Senior Officer. As the time left was very short the Govt. decided to notify the area U/s 6 & the decision on release of constructed areas was deferred till, the receipt of the report from the committee, which will distinguish the factories raised after Section 4 notification from the factories existing prior to section-4."

The Division Bench of the High Court took cognizance of the above reproduced averments in the counter affidavit but dismissed the writ petition by observing that after receipt of the report of the Joint Site Inspection Committee, the appellant's land was released from acquisition measuring 2 Kanals 11 Marlas.

We have heard Mr. Paramjit Singh Patwalia, learned Senior Counsel appearing for the appellant and Shri MS Dalal, Additional Advocate General for the State and carefully scrutinised the record.

In our view, the High Court committed a serious error in upholding acquisition proceedings qua the appellant's land. The statement contained in the last paragraph of the impugned order does not find support from the pleadings of the parties and no material has been produced before this Court by the respondents to show that the Committee of Senior Officer had, in fact, inspected the site after receipt of the report of the Land Acquisition

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Collector and on the basis of the report of the committee portion of the appellant's land was released from acquisition.

The importance of the inquiry envisaged under Section 5-A of the Act has been repeatedly emphasized by this Court. Reference in this connection can be made to *Munshi Singh & Others Vs. Union of India, 1973(2) SCC 337* and *Radhey Shyam and another vs. State of U.P. and another, 2011 (5) SCC 553*.

Since the respondents have not produced any material before this Court to show the decision taken by the State Government on the recommendations of the Land Acquisition Collector, it must be held that acquisition of appellant's land was vitiated due to the mandate of Section 5-A of the Act.

In the result, the appeal is allowed, the impugned order is set aside and the writ petition filed by the appellant is allowed in terms of the prayer made. However, it is made clear that the State Government shall be free to initiate the acquisition proceedings in the respect of the appellant's land afresh.

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.....J.  
(G.S. Singhvi)

.....J.  
(Sudhansu Jyoti Mukhopadhaya)

New Delhi,  
January 23, 2012

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ITEM NO.62

COURT NO.6

SECTION IVB

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).11110/2011  
(From the judgement and order dated 14/12/2010 in CWP  
No.8593/1990 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

KASHMIR SINGH

Petitioner(s)

VERSUS

STATE OF HARYANA & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 23/01/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s)

Mr. Paramjit Singh Patwalia, Sr. Adv.

Mr. Abhinav Ramkrishna, Adv.

Ms. Manjula Gupta, Adv.

For Respondent(s)

Ms. Anubha Agrawal, Adv.

Dr. Monika Gusain, Adv.

Mr. Manjit Singh, Addl. Adv. Gen. Haryana

Mr. Tarjit Singh, Adv.

Mr. Kamal Mohan Gupta, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

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(N.K. Goel)  
Court Master

(VEENA KHERA)  
Court Master

(Signed order is placed on the file)