

**Mohinder Sharma and others v. State of Haryana and others**  
(J. V. Gupta, J.)

---

'A' of the said Rules, such correction in the date of birth could be applied for only within a period of two years from the date of entry into government service and as this period has elapsed, no change could be effected in the date of birth of the plaintiff. The answer to this is provided by the judgment of this Court in *State of Punjab v. Kishan Chand* (1), where it was held that this rule was no bar to seeking correction of the date of birth from the Civil court even after the said period of two years had elapsed. Reference there was also made to *Shri Manak Chand Vaidya v. State of Himachal Pradesh and others* (2), where it was held that a provision determining when the application for correction of the date of birth should be entertained has the effect of limiting the exercise of the right of the government servant to show that the recorded entry is erroneous. Such limits, it was said, could be imposed only by a provision having the force of law.

(4) Such thus being the settled position in law, no exception can be taken to the judgment and decree of the lower appellate court granting to the plaintiff the relief claimed. This appeal is consequently hereby dismissed. There will, however, be no order as to costs.

---

S.C.K.

*Before J. V. Gupta, J.*

MOHINDER SHARMA AND OTHERS,—*Petitioners*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents*

*Civil Writ Petition No. 5968 of 1986*

May 26, 1988.

*Land Acquisition Act (I of 1894)—Ss. 4, 11-A and 31—Acquisition of land by State—Policy decision to exempt built-up area from acquisition—Petitioners houses not exempted—Award made by Collector—Amount neither paid to owners nor deposited in Court—Validity of such award—Acquisition proceedings if lapse.*

---

(1) R.S.A. 908 of 1983 decided on April 19, 1984.

(2) 1976(1) S.L.R. 402.

*Held*, that admittedly the government has taken a policy decision that all built-up areas existing at the time of issuance of notification under section 4 of the Land Acquisition Act, 1894, be left out of acquisition. However, according to the return the petitioners were not having any house on the land in dispute on the date of issuance of notification under Section 4 of the Act. Though it may be a disputed question of fact but from the facts and circumstances of the case it is clear that the petitioner had raised a construction over the land acquired prior to the notification under Section 4 of the Act. The impugned notification by which the land of the petitioner has been acquired and over which they have already raised construction prior to the issuance of notification under Section 4 of the Act stands quashed to that extent.

(Paras 6 and 9)

*Held*, that from the affidavit filed in the Court it is quite evident that the said amount was not deposited either in the R.D. or with the District Judge. That being so, the award was not a valid award as regards the petitioners. Section 11-A of the Act further provides that the award under Section 11 is to be made within two years from the date of the publication of the notification under Section 6 and if no award is made within that period, the entire proceedings for the acquisition of the land shall elapse.

(Paras 7 and 8)

*Petition under Articles 226 and 227 of the Constitution of India praying that:—*

- (a) record of the case may be called for;
- (b) a writ of certiorari quashing the impugned notifications annexures P-1 and P-2 be issued;
- (c) condition of issuing advance notices on the respondents may kindly be dispensed with;
- (d) any other appropriate writ, order or direction which this Hon'ble Court may deem fit in the circumstances and proper on the facts of the case quashing the impugned notifications under sections 4 and 6 annexures P-1 and P-2 be also issued;
- (e) during the pendency of the present writ petition in this Hon'ble Court, dispossession of the petitioners from the land in dispute may kindly be stayed;
- (f) during the pendency of the writ petition in this Hon'ble Court, further proceedings before the Land Acquisition Collector or any other authorities may also kindly be stayed;

Mohinder Sharma and others v. State of Haryana and others  
(J. V. Gupta, J.)

---

*It is further prayed that:—*

(g) costs of the present writ petition may also be awarded to the petitioners.

C. B. Goel, Advocate, with Sanjiv Sharma, Advocate, for the Petitioners.

Pardeep Gupta, Advocate, for the State.

JUDGMENT

J. V. Gupta, J.

(1) This order will also dispose of Civil Writ Petitions Nos. 5894 to 5896 of 1986, as the question involved is common in all these cases.

(2) The land of the petitioners was acquired by notification under section 4 of the Land Acquisition Act, (hereinafter called the Act), dated November 17, 1982 and,—vide notification under section 6 of the Act, dated December 10, 1984. The award is said to have been given on September 21, 1986. The petitions were filed in this Court in October, 1986. The facts as stated in Civil Writ Petition No. 5968 of 1986 are that the award was announced for the purpose on September 21, 1986, when there were no funds whatsoever with the authorities to be paid to the owners of the land. It has also been stated in paragraph 13 of the writ petition that other chunks of agricultural land of the petitioners were also acquired under another notification regarding which the award was announced on the same date i.e. on September 21, 1986 and the petitioners and others approached the authorities for receiving compensation under protest with regard to the said agricultural land. However, as there was no money with the authorities, nothing has been paid nor the amount deposited in the treasury, as required under the law. It has also been averred that the petitioners raised *pukka* houses on the land acquired in the year 1978 and that the petitioners along with their respective families are living in those houses. According to the petitioners, the entire acquisition is discriminatory on the part of the authorities inasmuch as similarly situated persons' houses and land have been left out of acquisition whereas the land on which the houses have been constructed by the petitioners has been acquired. In the written statement filed on behalf of the Land Acquisition Collector, it has been stated as a preliminary objection that the

---

possession has already been taken and, therefore, the land has vested in the State Government and that the writ petition was liable to be dismissed on this ground alone. As regards the construction of the houses, it has been pleaded in paragraph 2 of the return that it was denied for want of knowledge whether the families of the petitioners are residing therein. Again in paragraph 6 it has been reiterated that the petitioners were not having any house on the land in dispute on November 17, 1982, i.e., the date of the issuance of the notification under section 4 of the Act. As regards the payment of compensation, it was stated in paragraph 13, that the compensation of the land will be given to the petitioners shortly.

(3) On the last date of hearing, i.e., January 12, 1988, the Land Acquisition Collector was directed to file an affidavit that the amount of award was tendered to the petitioners at the time of the making of the award on September 21, 1986, as required under section 31 of the Act or in case of refusal, the amount was deposited before the District Judge concerned. In pursuance of the said order, an affidavit dated February 10, 1988, was filed by the Land Acquisition Collector in this Court, which reads as under:

“As per the office report dated 8th February, 1988 none of the petitioners was present at the time of the announcement of the award dated 21st September, 1986. Therefore, the petitioners could not be paid the amount of compensation on the said date. The said amount has not been deposited in the R.D. or with the District Judge and is still lying with the office of the deponent.”

(4) The learned counsel for the petitioners contended that since they have already constructed houses on the land acquired prior to the issuance of the notification under section 4 of the Act, the same was liable to be exempted from acquisition according to the Government policy. It was further submitted that the land on which the houses have been constructed by the other persons, has been exempted from acquisition and, therefore, the petitioners' land was also liable to be exempted. In any case, argued the learned counsel, no payment has been made uptill today under the award, nor the amount has been deposited with the District Judge, as contemplated under section 31 of the Act. The award, if any, was of no consequence and, therefore, the proceedings are vitiated.

(5) On the other hand, the learned counsel for the respondent submitted that once the possession has been taken, the land vests

Mohinder Sharma and others v. State of Haryana and others  
(J. V. Gupta, J.)

---

in the State Government and, therefore, the writ petition was liable to be dismissed on this short ground alone. In support of this contention, reference was made to the Full Bench judgment of this Court in *Narinjan Singh v. The State of Punjab* (1). The learned counsel further submitted that there was no requirement of law that the amount after the award should be deposited with the District Judge concerned in case the claimants were not present at that time.

(6) At the time of the motion hearing, the dispossession of the petitioners from the land acquired was stayed. The respondents never challenged the said order or made any application for setting aside the same on the ground that the possession of the land had already been taken. According to the return, the possession thereof was taken on September 21, 1986. No documentary evidence has been produced to show that the possession was taken on that date as the award itself was given on that date. Thus, on the facts and circumstances of the case, it could not be held that the possession of the land acquired had been taken by the respondents then and, therefore, the land acquired had vested in the State Government.

(6A) It is not disputed that according to the Government policy, the land over which the persons have raised construction was not to be acquired. The petitioners have specifically pleaded that they have raised construction over the land acquired prior to the notification under section 4 of the Act. Rather, it has been stated in paragraph 2 of the writ petition that the petitioners raised *pucca* houses thereon in the year 1978. Now the petitioners along with their respective families are living in these houses. In the return filed on behalf of the respondents, in paragraph 2, it is stated that there was no *pucca* house in the land at the time of the issuance of notification under section 4, on November 17, 1982, and if any construction has been made after that, it was illegal and unauthorised. Moreover, it has been denied for want of knowledge whether the families of the petitioners are residing therein or not. Apart from that, the petitioners filed objections under section 5-A of the Act wherein was pleaded that the land of Kirti Nagar be exempted from acquisition and in fact on the recommendations of the Land Acquisition Collector, the land of Kirti Nagar was exempted because of the construction of the houses thereon. Since the petitioners have also raised construction on the land acquired, it was also liable to be

---

(1) 1985 P.L.R. 358.

---

exempted. In the return filed on behalf of the respondents, it was admitted that the Government has taken a policy decision that all built up area existing at the time of the issuance of notification under section 4 of the Act be left out of acquisition. However, according to the return, the petitioners were not having any house on the land, in dispute, on November 17, 1982. Though it may be a disputed question of fact, but from the facts and circumstances of the case, it is clear that the petitioners had raised construction over the land acquired prior to the notification under section 4 of the Act.

(7) Section 31 of the Act, so far as it is relevant for the purposes of these petitions, reads as under:

“31. *Payment of compensation or deposit of same in Court.—*

(1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted.”

From the affidavit dated February 10, 1988, filed in this Court, it is quite evident that the said amount was not deposited either in the R.D. or with the District Judge. That being so, the award dated September 21, 1986, was not a valid award as regards the petitioners.

(8) Section 11-A of the Act further provides that the award under section 11 is to be made within two years from the date of the publication of the notification under section 6 and if no award is made within that period, the entire proceedings for the acquisition of the land shall elapse.

(9) In these circumstances, all the writ petitions succeed and are allowed. The impugned notifications by which the land of the petitioners has been acquired and over which they have already raised construction prior to the issuance of the notification under section 4 of the Act, stand quashed to that extent. There will be no order as to costs.

---

S.C.K.