

06 January 2016

VINOD KUMAR Vs. STATE OF HARYANA AND OTHERS

Recently, Hon'ble Supreme Court in **Vinod Kumar ('Appellant') Vs. State of Haryana and Others ('Respondent')** held that declaration Under Section 6 of the Land Acquisition Act, 1894 ("Act") has to be made only after the appropriate Government is satisfied on the consideration of the report, if any, made by the Collector Under Section 5A(2). The case was decided on 28.01.2014.

BRIEF FACTS OF THE CASE:-

1. The Appellant is the owner of 5 Kanals 6 Marlas of land most of which was ordered for acquisition which included the constructed portion of the house and only 934 square yards had been left out of acquisition.
2. On 07.02.2008, under the Haryana Urban Development Authority Act, 1977, the Haryana Urban Development Authority issued a notice for acquisition of land including that of the Appellant for public purpose namely i.e. for the development of the land as residential and commercial purposes and the Land Acquisition Collector, Urban Estate, Faridabad, Haryana was authorized to take necessary action regarding the same. The notification was issued under Section 4 of the Act.
3. Under Section 5A of the Act, the Appellant raised a detailed objection that his land is not fit for acquisition since he had raised an A Class construction on it. But on 10.03.2008, the Authority without looking into the merits, released the land in favour of M/s Ritwiz Builders and Developers Pvt. Ltd.
4. On 15.09.2008, the Land Acquisition Collector on considering the said objection gave his ruling in favour of the Appellant. Even then, the Authority vide notification dated 06.02.2009 made a declaration that the Appellant's land was to be acquired for the development of residential and commercial Sector Nos. 76, 77 and 78 for which the notification was initially issued on 07.02.2008.
5. The Appellant's writ petition was tagged along with other similar petitions before the High Court of Punjab and Haryana in 2009 in which the ruling was in favour of the Authority since the construction was raised in an unauthorized manner. Then, the Appellant filed review application which was also dismissed on 16.12.2011. Therefore, aggrieved by the decision of the High Court, the Appellant filed the present petition in the Hon'ble Supreme Court for consideration.

APPELLANT'S CONTENTION:-

As per the policy of the Government of Haryana, the constructed portion including the amenities and other built up areas are required to be released from the process of acquisition. The Appellant contended that the High Court erred in not appreciating the fact that the Land Acquisition Collector in his report had mentioned that the land of the Appellant may not be acquired since it had a well-laiden beautiful residence. It was also the case of the Appellant that in a different case having similar facts, the High Court had passed an order releasing the lands over which built up houses were situated. It was contended that the State Government had acquired the land illegally and in an unauthorized manner and had adopted the 'pick and choose' methodology for acquiring land thereby exempting the commercial establishments from acquisition and discriminating against the Appellant.

RESPONDENT'S CONTENTION:-

The Appellant had illegally raised construction on this land without permission of the concerned authority. Hence, the Appellant could not seek exemption from acquisition on the ground that there was a residential construction on the land and therefore, the land could not be acquired.

OBSERVATIONS OF THE COURT:-

The Hon'ble Supreme Court observed that, hearing contemplated under section 5A(2) is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition and make a report. The report of the Collector referred to in this provision is not an empty formality because it is required to be placed before the appropriate Government together with the Collector's recommendations and the record of the case. It is only upon receipt of the said report that the Government can take a final decision on the objections. It is pertinent to note that declaration under section 6 has to be made only after the appropriate Government is satisfied on the consideration of the report, if any, made by the Collector under section 5A(2).

DECISION OF THE COURT:-

"Hence, the declaration made by the Government for acquisition of land of the Appellant under section 6 of the Act does not provide any reason for arriving at a decision contrary to that of the report produced by the Land Acquisition Collector. Therefore, the basic protection to which the landowners are entitled to under the Act through Section 5A is violated. Consequently, the process of acquisition of the land of the Appellant is tainted with mala-fide and therefore, the same is liable to be set aside."

Accordingly, the impugned acquisition notifications under sections 4 and 6 of the Act in relation to the Appellant's land and the action taken thereon were quashed and the impugned judgment and orders of the High Court were set aside.

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