Supreme Court of India
Bharat Singh & Ors vs State Of Haryana & Ors on 13 September, 1988
Equivalent citations: 1988 AIR 2181, 1988 SCR Supl. (2)1050
Author: M Dutt
Bench: Dutt, M.M. (J)

PETITIONER:
BHARAT SINGH & ORS.

Vs.

RESPONDENT:
STATE OF HARYANA & ORS.

DATE OF JUDGMENT13/09/1988

BENCH:
DUTT, M.M. (J)
BENCH:
DUTT, M.M. (J)
SINGH, K.N. (J)

CITATION:
1988 AIR 2181 1988 SCR Supl. (2)1050
1988 SCC (4) 534 JT 1988 (4) 91
1988 SCALE (2)890

ACT:
Land Acquisition Act , 1894- Section 4(1)--Whether substance of the notification is published in the localities concerned or not is preeminently a matter of fact and not of law.
%
Land Acquisition Act, 1894-Section 3--Public purpose--Development and industrialisation of land is a public purpose and not a profiteering venture.
Pleadings--Pleadings under Civil Procedure Code and a writ petition or counter affidavit are different--In plaint or written statement facts are to be pleaded but in writ petition facts and evidence in proof thereof is also to be pleaded. Point of law should be substantiated by facts--The facts must be pleaded and proved by evidence which must appear from writ petition or counter affidavit--If not so done Court will not entertain that point.

HEADNOTE:
The State of Haryana through Haryana Urban Development Authority (HUDA) acquired some land under the land Acquisition Act for the purpose of development and utilisation of that land for industrial purposes of Gurgaon

under the Haryana Urban Development Authority Act, 1977. The appellants herein filed writ petitions in the High Court challenging the validity of the acquisition of land. The High Court dismissed the writ petitions. Hence the writ petitions filed these appeals by special leave. .Some other affected persons also filed writ petitions in this Court Dismissing all the appeals and the writ petitions. this Court,

HELD: The first ground of attack to the acquisition that the sub-stance of the notification under section 4(1) of the Act has not been published in the locality of the land said to be acquired is without any foundation. Whether the substance of the notification was published or not is pre-eminently a question of fact. It is apparent from the statement made in paragraph 8 of the affidavit in reply of the land Acquisition Collector that the substance of the notification was published in the concerned localities. It is further stated in the affidavit that pursuant such

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publication, 157 of the land owners filed objections to the proposed acquisition. This fact has not been disputed by the appellants. In view of these facts the first ground of attack is without any foundation whatsoever. [1054D-E]

The second ground of attack was that the sole purpose of the acquisition was for a profiteering venture of the Government to acquire land at nominal price and then to re-sale the same at a high profit Reliance was placed on an application for intervention filed in this matter by Haryana State Industrial Development Corporation (HSIDC) which showed that HUDA sold the land to HSIDC at a very high price paid by HSIDC out of the amounts received from intended allottees/entrepreneurs. In the opinion of this Court the facts stated in the application of the HSIDC do not, support the contention of the appellants. It is true that, as stated in the said application, HSIDC paid a sum of Rs. 1.74 crores to HUDA, but nothing turns out on that. The land was acquired by the Government for the purpose of development and industrialisation. The Government can do it itself or through other agencies. In the instant case, the land was acquired at the instance of HUDA and, thereafter, HUDA had transferred the same to HSIDC. It is not that the land was transferred in the same condition as it was acquired. But, we are told by the learned Counsel appearing on behalf of HUDA and HSIDC that before transferring, HUDA had made external developments incurring considerable cost and HSIDC in its turn has made various internal developments and in this way the land has been fully developed and made fit for industrialisation. Thus, there was no motive for HUDA to make any profit. [1058E-H; 1059A]

The "Public purpose" in question is development and industrialisation of the acquired land. The appellants have not challenged the said public purpose. In the absence of

any such challenge it does not lie in the mouth of the appellants to contend that the acquisition was merely a profiteering venture by the State Government through Haryana Urban Development Authority. Even assuming that HUDA has made some profit, that will not in any way affect the public purpose for which the land was acquired and the acquisition will not be liable for any challenge on that ground. [1059B-D]

Arnold Rodricks v. State of Maharashtra, AIR 1966 SC 1788, referred to.

When a point which is ostensibly a point of law i6 required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent from the counter-

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affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. [1059F-G]

There is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. [1059G-H]

The contention of the appellants that the acquisition is for HSIDC which is a `company' within the meaning of section 3(e) of the Act and, accordingly, the acquisition is invalid for the non-compliance with the provisions of Part-III of the Act is untenable. In the notification under section 4(1), it has been clearly stated that the development and industrialisation of the acquired land would be made under the Haryana Development Authority Act, 1977 by HUDA. It is, therefore, manifestly clear that HUDA was the acquiring authority and not HSIDC. It is for HUDA to develop the land fully either by itself or by any other agency or agencies. HUDA has transferred the land to HSIDC for the purpose of development and allotment to various persons. It is too much to say that as HUDA has transferred the acquired land to HSIDC, the latter is the acquiring authority. [1060B-D]

The contention that the petitioners have been discriminated inasmuch as the land of other persons in the village has not been acquired is without any substance whatsoever. The Government will acquire only that amount of land which is necessary and suitable for the public purpose in question. The land belonging to the petitioners have been acquired obviously considering the same as suitable for the public purpose. [1061D]

JUDGMENT:

CIVIL APPELLATE/ORIGINAL JURISDICTION: Civil Appeal No 1193 of 1984 and 572-573 of 1985.

From the Judgment and Order dated 12.10.1983 of the Punjab and Haryana High Court in C.W.P. Nos. 1659, 1777 and 1659 of 1983.

Writ Petition (C) Nos. 11106-27 of 1984.

PG NO 1053 (Under Article 32 of the Constitution of India) U.R. Lalit, D.N. Goburdhan and Pankaj Kalra for the Appellants.

R.N. Sachthey, D.S. Tewatia, Anip Sachthey and Mahabir Singh for the Respondents.

The Judgment of the Court was delivered by DUTT, J. In these appeals and writ petitions, the appellants and the petitioners have challenged the validity of the acquisition of their land by the State of Haryana under the Land Acquisition Act, 1894, hereinafter referred to as `the Act', for a public purpose, namely, for the development and utilisation of land for industrial purpose at Gurgaon under the Haryana Urban Development Authority Act, 1977 by the Haryana Urban Development Authority (for short HUDA). Although, both in the appeals and in the writ petitions the validity of acquisition has been challenged, we propose to deal with the appeals first.

The appeals are directed against the judgments of the Punjab & Haryana High Court dismissing the writ petitions of the Appellants questioning the validity of the acquisition of their land and praying for the quashing of such acquisition.

The first ground of attack to the acquisition, as urged by Mr. Lalit, the learned Counsel appearing on behalf of the appellants in Civil Appeal No. 1193 of 1984, is the non- publication of the substance of the notification under section 4(1) of the Act in the locality of the land sought to be acquired It is true that section 4(1) enjoins that the Collector shall cause public notice of the substance of the notification to be given at convenient places in the locality. It is however, preeminently a question of fact. The allegation of the appellants as to the non-publication of the notification under section 4(1), as made in the writ petition before the High Court, was emphatically denied and disputed in paragraph 8 of the affidavit in opposition affirmed by the Land Acquisition Collector Paragraph 8 reads as follows:

"8. In reply to para 8 of the writ petition. it is submitted that the averments of the petitioners are wrong and denied. The publicity of the substance of the notification was made in concerned locality of village PG NO 1054 Dundahera on 6th July, 1981 through Shri Chhattar Singh Chowkidar with loud voice and beating of empty tin. The report exists in Roznamcha Vakyati at Serial No. 519 dated 6.7.1981. Similarly, the publicity was made in concerned locality of village Mulahera through Shri Surjan Singh Chowkidar with loud voice and beat of empty tin (Kanaster). A report to this effect exists in Roznamcha Vakyati at Serial No. 520 dated 6.7 1981. The publicity was made on this very day on which the notification was issued. In response to this publicity 157 land-owners filed

objection applications which clearly shows that due publicity was made in the concerned locality and the averments of the petitioners are wrong, baseless and hence denied."

It is apparent from the statement made in paragraph 8 that the substance of the notification under section 4(1) was published in the concerned localities of villages Dundahera and Mulahera. It is, however, urged on behalf of the appellants that it was not at all possible to make entries in the Roznamcha as to the publication of the notification under section 4(1) on the same day it was published in both the villages. It is submitted that on this ground the statement in paragraph 8 as to the publication of the substance of the notification in the localities should not be accepted, and it should be held that there was no such publication is alleged. We are afraid, we are unable to accept the contention. Apart from the statement that there was publication of the notification, there is further statement in paragraph 8 that pursuant to such publication, 157 land-owners filed objections to the proposed acquisition. This fact has not been disputed before us on behalf of the appellants. Moreover, Mr. Tewatia, learned Counsel appearing on behalf of the State of Haryana, has produced before us the original objection petitions filed by the land-owners. In each of these objection petitions there is a note at the end which reads as follows:

"Note: The above referred notification was announced by the beat of drum in the village Dundahera on 6.7.1981, vide Patwari's Roznamcha Report No. 519 dated 6.7.1981."

Similar notes, as extracted above, are there in the petitions of objections filed by the land-owners of village Mulahera. In view of the facts stated above, the allegation of the appellants that the substance of the notification under section 4(1) of the Act was not published in the localities of the two villages mentioned above, is without any foundation whatsoever. The contention of the appellants in this regard is rejected.

PG NO 1055 The next ground of attack to the acquisition comes from Mr. Kalra, the learned Counsel appearing on behalf of the appellants in Civil Appeals Nos. 572 & 573 of 1985. It is urged by the learned Counsel that the sole purpose of the acquisition is for a profiteering venture of the Government to acquire land of the helpless farmers at a nominal price of Rs. 10, Rs. 20 or Rs. 50 per square yard and then to resale the same at a high profit. It is submitted that a welfare State should work for the poor and the down-trodden of the society rather than to displace them from their land for the sake of making profit. Our attention has been drawn by the learned Counsel to an application filed in this Court by the Haryana State Industrial Development Corporation (for short HSIDC) praying for impleading it as a party-respondent in these appeals. In this application it has been stated, inter alia, by HSIDC that it plays an important role in the industrialisation of the State by providing concessional finance and offering land at no profit no loss basis along with infra-structure facilities for setting up new industrial units in the State. Further, it is stated that the land in Udhyog Vihar, Phase-lV, (land which is the subject-matter of these appeals), was acquired by HUDA and later sold to HSIDC at the approximate price of Rs 55,000 per acre. In paragraph 5 of the application, it is stated that on account of the price of the above land of Phase-lV, approximately Rs. 1.74 crores was paid by the the HSIDC to HUDA. The said payment was made out of the amounts received from the intended allottees/entrepreneurs and also out to the funds/reserves of the HSIDC, and that a sum of Rs. 4.90 crores is estimated to be spent on the development of the industrial

complex in question.

Relying upon the above statements in the said application of HSIDC, the learned Counsel for the appellants, endeavours to substantiate his contention that the impugned acquisition is nothing but a profiteering venture of the Government. It is urged that the said statements in the application prove that the Government has made huge profit in the guise of development and utilisation of the land for industrial purpose at Gurgaon. In support of the contention, Mr. Kalra has placed reliance upon an observation of Mahajan, J. (as he then was) in the State of Bihar v. Maharajadhiraja Sir Kameshwar Singh, [1952] 3 SCR 889, namely, that it is a well accepted proposition of law that property of individuals cannot be appropriated by the State under the power of compulsory acquisition for the mere purpose of adding to the revenues of the State. The learned Counsel has also placed reliance on the observation in the minority judgment of Wanchoo, J.

PG NO 1056 in Arnold Rodricks v. State of Maharashtra, AIR 1966 SC 1788. In that case, the enquiries purported to be held under section 5A and section 11 of the Act were challenged as illegal, invalid and inoperative in law. In that connection, the validity of the definition of "Public purpose" in clause

(f) of section 3 of the Act, as amended by the Bombay Amendment Act 35 of 1953, also came to be considered. Clause (2) of the amended definition in clause (f) reads as follows:

> "(f). the expression "Public purpose" includes- (1) .....

(2) the acquisition of land for purposes of the development of areas from public revenues or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or any part by lease, assignment or sale, will be object of securing further development." Wanchoo, J. observed as follows:

"(33). The attack of the petitioners is on the second part of the addition in 1953 which provides for "subsequent disposal thereof in whole or in part by lease, assignment, or sale, with the object of securing further development." It is urged that all these words means that after the development envisaged in the first part of the addition the State or the local authority would be free to dispose of the land acquired in whole or in part by lease, assignment or sale, apparently to private persons. This, it is said, means that the State or the local authority would acquire land in the first instance and develop it in the manner already indicated and thereafter make profit by leasing, assigning or selling it to private individuals or bodies. It is also said that the object of securing further development which is the reason for sale or lease etc. is a very vague expression and there is nothing to show what this further development comprises of.

(34). It is true that when this part speaks of "subsequent disposal thereof in whole or in part by lease, assignment or sale", it is not unlikely that this disposal] will take place to private persons and thus in an indirect way the State would be acquiring the land from one set of individuals and disposing it of to another set of PG NO 1057 individuals after some development. If this were all, there may be some force in the argument that such acquisition is not within the concept of "public

purpose" as used in Art. 31(2). But this in our opinion is not all. We cannot ignore the words "with the object of securing further development", which appear in this provision. It would have been a different matter if the provision had stopped at the words "lease, assignment or sale"; but the provision does not stop there. It says that such lease, assignment or sale must be with the object of securing further development, and these words must be given some meaning. It is true that the words "further development" have not been defined, but that was bound to be so, for further development would depend upon the nature of the purpose for which the land is acquired. Of course, it is possible that further development can be made by the State itself or by the local authority which acquired the land; but we see no reason why the State or the local authority should not have the power to see that further development takes place even through private agencies by lease, assignment or sale of such land. So long as the object is development and the land is made fit for the purpose for which it is acquired there is no reason why the State should not be permitted to see that further development of the land takes place in the direction for which the land is acquired, even though that may be through private agencies. We have no doubt that where the State or the local authority decides that further development should take place through private agencies by disposal of the land so acquired by way of lease, assignment or sale, it will see that further development which it has in mind does take place. We can see no reason why if the land so acquired is leased, assigned or sold, the State or the local authority should not be able to impose terms on such lessees, assignees or vendees that will enable further development on the lines desired to take place. We also see no reason why when imposing terms, the State or the local authority may not provide that if the further development it desires the lessee, assignee or vendee to make is not made within such reasonable time as the State or the local authority may fix, the land will revert to the State or the local authority so that it may again be used for the purpose of further development which was the reason for the acquisition of the land."

PG NO 1058 We fail to understand how does the above observation help the contention of the learned Counsel for the appellants that the acquisition has been made by the Government with a motive for profiteering in the guise of development and industrialisation. The observation of Wanchoo, J relates to the definition of "Public purpose" under section 3(f) of the Act as amended by the Bombay Amendment Act 35 of 1953. The amended provision specifically provides for the disposal of acquired land in whole or in part by lease, assignment or sale, but there is no such provision in the unamended section 3(f) of the Act with which we are concerned. Wanchoo, J overruled the contention as to profiteering by the State or local authority as the amended provision made it very clear that such subsequent disposal of the acquired land will be for the purpose of securing further development. We do not think we are called upon to express any opinion on the correctness or otherwise of the above observation, and all that we say is that there is no such provision like the amended definition in section 3(f) of the Act with which we are concerned. In the circumstances. the observation has no manner of application in the instant case.

In the writ petitions, the point was taken as an abstract point of law. There was no attempt on the part of the appellants to substantiate the point by pleading relevant facts and producing relevant evidence. It is apparent that there was no material in the writ petitions in support of the contention of the appellants that the impugned acquisition was nothing but a profiteering venture. The contention was not also advanced before the High Court at the hearing of the writ petitions. The

facts stated in he said application of the HSIDC do not, in our opinion, support the contention of the appellants. It is true that, as stated in the said application, HSIDC paid a sum of Rs. 1.74 crores to HUDA, but nothing turns out on that. The land was acquired by the Government for the purpose of development and industrialisation. The Government can do it itself or through other agencies. In the instant case, the land was acquired at the instance of HUDA and, thereafter, HUDA had transferred the same to HSIDC. It is not that the land was transferred in the same condition as it was acquired. But, we are told by the learned Counsel appearing on behalf of HUDA and HSIDC that before transferring, HUDA had made external developments incurring considerable cost and HSIDC in its turn has made various internal developments and in this way the land has been fully developed and made fit for industrialisation. Our attention has been drawn by the learned Counsel for HUDA and HSIDC to the various external developments made by HUDA at a cost of Rs. 1,66,200 per acre before it was transferred to HSIDC and the cost that was incurred for external developments was included in the price. Thus, there was no motive for HUDA to make any profit.

PG NO 1059 The "public purpose" in question, already noticed, is development and industrialisation of the acquired land. The appellants have not challenged the said "public purpose". In the absence of any such challenge, it does not lie in the mouth of the appellants to contend that the acquisition was merely a profiteering venture by the State Government through HUDA. The appellants will be awarded the market value of the land as compensation by the Collector. If they are dissatisfied with the award they may ask for references to the District Judge under section 18 of the Act. If they are still aggrieved, they can file appeals to the High Court and, ultimately, may also come to this Court regarding the amount of compensation. The appellants cannot claim compensation beyond the market value of the land. In such circumstances, we fail to understand how does the question of profiteering come in. Even assuming that HUDA has made some profit, that will not in any way affect the public purpose for which the land was acquired and the acquisition will not be liable for any challenge on that ground. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter, affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us PG NO 1060 by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.

Equally untenable is the contention of the appellants that the acquisition is for HSIDC which is a `company' within the meaning of section 3(e) of the Act and, accordingly, the acquisition is invalid for the non- compliance with the provisions of Part-III of the Act. In the notification under section 4(1), it has been clearly stated that the development and industrialisation of the acquired land would be made under the Haryana Development Authority Act, 1977 by HUDA. It is, therefore, manifestly clear that HUDA was the acquiring authority and not HSIDC. It is for HUDA to develop the land fully either by itself or by any other agency or agencies. HUDA has transferred the land to HSIDC for the purpose of development and allotment to various persons. It is too much to say that as HUDA has transferred the acquired land to HSIDC, the latter is the acquiring authority. We do not think that there is any substance in the contention and it is, accordingly, rejected.

Now we may consider the contention made on behalf of the petitioners in the writ petitions Nos. 11106 to 11127 of 1984. The first point that has been urged by Mr. Goburdhan, learned Counsel appearing on behalf of the writ petitioners, is similar to that urged by Mr. Lalit in Civil appeal No 1193 of 1984, namely, non-publication of the substance of the notification under section 4(1) of the Act in the locality. This contention need not detain us long, for in the counter-affidavit filed by the Land Acquisition Collector, it has been averred that the substance of the notification was published and out of 22 petitioners 16 filed their objections pursuant to the publication of the notification in the locality. A similar note, as extracted above, appears in all these objections. In the circumstances, there is no substance in the contention of the petitioners that the substance of the notification under section 4(1) of the Act was not published in the locality. Next it is urged on behalf of the petitioners that before starting the proceedings for acquisition, the Government had not applied its mind to its policy decision, as contained in the circular No. 2099-R-III-82/17113 dated 18.5.1982 wherein it has been stated that "in the matter of State's need for land for its development activities, utmost restraint should be exercised in the acquisition of land." It is submitted that as the land is agricultural, it should not have been acquired in view of the said policy decision PG NO 1061 of the Government.We are unable to accept the contention. In a welfare State, it is the duty of the Government to proceed with the work of development and take steps for the growth of industries which are necessary for the country's progress and prosperity and for solving the question of unemployment. It is true that agricultural land is necessary and should not ordinarily be converted to non-agricultural use, but keeping in view the progress and prosperity of the country, the State has to strike a balance between the need for development of industrialisation and the need for agriculture. The allegation that before initiating the acquisition proceedings, the Government has not applied its mind to the need for agricultural land is a very vague allegation without any material in support thereof. The contention is overruled.

Lastly, it is argued by Mr. Goburdhan for the writ petitioners that the petitioners have been-discriminated inasmuch as the land of other persons in the village has not been acquired. This contention is without any substance whatsoever. The Government will acquire only that amount of land which is necessary and suitable for the public purpose in question. The land belonging to the petitioners have been acquired obviously considering the same as suitable for the public purpose. The petitioners cannot complain of any discrimination because the land of other persons has not been acquired by the Government. The contention is devoid of any merit whatsoever.

Before parting with these cases, we may consider a short submission on behalf of the appellants as also the writ petitioners that as by the acquisition of their land they have become landless, they should be allotted land by HSIDC, after development, so that they may start their businesses and earn their livelihood. After giving our anxious consideration to this submission, we direct that if any of the appellants or the petitioners, who has become really landless by the acquisition of his land, makes an application for the allotment of land, the HSIDC shall consider such application and give him priority in the matter of allotment provided he fulfils the conditions for such allotment and plot is available.

Another short submission has been made on behalf of the appellants in Civil Appeal No 1193 of 1984. Our attention has been drawn to paragraphs 4 and 5 of the additional affidavit filed on behalf of the appellants, and affirmed by one Sat Prakash, son of Mathura Prashad, one of the appellants, that in Khasra No 21/6/2 and in Khasra No. 22/10/1, there are a temple, a Piaou and a Dharamshala. It is submitted that the land comprising the temple, Piaou and Dharamshala may be exempted from acquisition. We do not PG NO 1062 consider it necessary to give any direction in this respect. The appellants, however, will be at liberty to make a representation in that regard to the authority concerned. No other point has been urged in these cases.

For the reasons aforesaid, subject to the directions given on the short submissions, all the appeals and the writ petitions are dismissed. There will, however, be no order as to costs in any of them.

H.S.K. Appeals and Petitions are dismissed.