
(1982) 08 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2730 of 1980

Agya Ram

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 27-08-1982

Acts Referred:

Constitution of India, 1950 — Article 31

Land Acquisition Act, 1894 — Section 11, 36, 48, 6, 9

Citation : AIR 1983 P&H 147

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Judgement

1. The petitioner seeks the quashing of notification dated July 17, 1980(Annexure P. 7) issued under S. 48 of the Land Acquisition Act, 1894(for short, the Act) and further a writ of mandamus to the land Acquisition Collector respondent No. 2 to complete the acquisition proceedings regarding petitioner's land detailed in para 2 of the petition and to announce the award as envisaged by S. 11 of the Act. This relief is claimed on the basis of the following facts:

On Jan. 31, 1979, the State Government issued notification (Annexure P. 1) u/s 4 of the Act for the acquisition of land including that of the petitioner for the installation and energisation of 400 K. V. Dehar-Panipat line which admittedly was to pass over the land of the petitioner. This notification was followed by another notification dated March 21, 1979(Annexure P. 2) u/s 6 of the Act and few other steps towards the finalisation of the acquisition proceedings. It deserves to be mentioned here that prior to the issuance of the above-noted notifications the petitioner received certain communications from respondent No. 3 asking him that he should shift his brick-kiln run in the land in question as the Chimney of the same would directly fall under the abovesaid transmission line. Basing his cause of action on these letters the petitioner filed a suit for injunction in the Court of Sub Judge, Ist Class, Chandigarh, praying therein that the defendant (presently respondent No. 3) "should not demolish the brick-kiln " of the petitioner and during the trail of that suit Shri P. P. Maheshwari, Executive

Engineer of respondent No. 3 made a statement before the Court on Dec. 22, 1978, that :we wanted the brick-kiln to be shifted but the same would not be done forcibly." In view of this statement on behalf of the defendant, the suit was with-drawn. At a later stage, after the energisation of the abovesaid line which was done on July 12, 1979, the respondent-authorities, as already indicated have withdrawn the abovenoted process of acquisition of t he land in question by issuing the impugned notification under S. 48 of the Act.

2. The case of the respondent-authorities in a nutshell is that they had never taken possession of the land of the petitioner nor have they shifted or asked for the shifting of t he brick-kiln subsequent to t he making of the statement by Shri Maheshwari before the Civil Court, they were well within their right to abandon the acquisition and issue the impugned notification under S. 48 of the Act. This section reads as follows:

"48. Completion of acquisition not compulsory, but compensation to be awarded when not completed-

(1) Except in the case provided for in Section 36, the government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of t he notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of t he proceedings under this Act relating to the said land.

(3) The provision of A Part III this Act shall apply, so far as may be, to the determination of t he compensation payable under this section."

A bare reading of the abovenoted section makes it manifestly clear that it recognises the right of the Government to withdraw from the acquisition of any land provided (i) it had not taken possession, or (ii) the case is not one covered by S. 36. The petitioner has not made even a remote reference to any proceedings taken by the respondent-authorities under Ss. 35 and 36 of the Act. Rather it is fairly conceded that the said authorities had as a matter of fact never resorted to those proceedings. So the narrow question which needs to be determined is whether the possession to petitioner"s land was taken by the respondent-authorities at any stage.

3. In support of his claim that the possession of petitioner"s land was taken by the respondent-authorities subsequent to t he issuance of notifications under Ss. 4 and 6 (provisions of S. 17 too are invoked in the latter notification), learned counsel for the petitioner refers to the following material on record :

"(i) In reply to t he claim filed by the petitioner u/s 9 of the Act, it has been stated on behalf of the respondent-Board "the line was electrically charged on

12-7-1979".

(ii) In para 113 of the written statement filed by the Board, it has been admitted that the stringing of the said transmission line between TL No. 347 was done during the period Nov. / Dec., 1978."

Besides this, the learned counsel also refers to some correspondence exchanged between the Board Authorities and the Land Acquisition Collector wherein the former has been asking the latter to deliver possession of the land concerned.

4. The abovenoted material on which the learned counsel seeks firm reliance to submit that the respondent-authorities had actually entered into physical possession of the land or to say as he wants to, that the above-noted acts done by the respondent-authorities could not have been done unless the said authorities had entered into possession of the land in question, I find the same is wholly insufficient to hold that the respondent-authorities ever entered into actual physical possession of the land. Section 48 does not apply to temporary occupation of the land under Part VI of the Act, Ss. 325 to 37. u/s 36, the period of possession cannot exceed three years. Government loses its right to withdraw from acquisition only when it has taken authorised permanent possession under S. 16 or 17 of the Act. Had every temporary occupation of land under part VI of the Act or independent of that been taken to be as good as permanent possession of the land for purposes of S. 48 of the Act then S. 36 would not have been created as an exception to the former. This position is further clear from the following observations made by a Division Bench of the Patna High Court in *Jetmull Bhojraj Vs. The State of Bihar and Others*, :

"The taking of possession referred to in Ss. 16, 17(1), 34 and 48(1) of the Land Acquisition Act, is of the same nature. Hence, unless the party to the suit can show that possession over that portion of the disputed lands, which are notified as having been withdrawn from acquisition is of the nature required by either S. 16 or S. 17(1) of the Act, the legality of the order of withdrawal cannot be successfully challenged. For, S. 48(1) does not say that the Government has to follow any particular procedure in withdrawing any land from acquisition. But the Government loses its rights to withdraw from acquisition only from the date when the Collector takes possession under S. 16 or 17, so that title vests free from all encumbrances in then Govt."

5. Even this Court in *Udmi Ram v. State of Punjab*, 1970 Cur LJ 78, where a land-owner sought to execute the award made by the Land Acquisition Collector prior to the taking over of possession of that land by the Government, an objection was raised on behalf of the Government that the execution was premature, upheld the same with the following observations :

"Held that there is no transfer of title to the Government till possession of the land is taken under S. 16 or in case of emergency, under S. 17. Possession, u/s 16 is taken after the award is made ; whereas u/s 17 it is taken before the award is made. But the fact of the matter is that only transfer of possession from the

owner to the Government passes title."

6. Learned counsel next contends that the word "possession" as used in S. 48 of the Act does not mean that the acquiring authorities should have entered into actual physical possession of the land sought to be acquired but any deprivation of the management or enjoyment of that property by the petitioner on account of the acts of the respondent-authorities would also amount to taking of the possession from the petitioner. In support of this claim of his, he relies on a Single Bench judgment of Madras High Court in Mohammed Karimuddin v: State of Madras (1975) 2 Mad LJ 396, which judgment in turn is based on two earlier judgments of the Supreme Court in The State of West Bengal Vs. Subodh Gopal Bose and Others, and Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others, . In Karimuddin's case (supra), subsequent to the issuance of a notification u/s 4 of the Act, some persons unauthorisedly came to occupy the land which was being acquired and the acquiring authorities never objected to that and subsequently chose to abandon the acquisition proceedings with the issuance of notification u/s 48 of the Act. While quashing the notification under S. 48 of the Act, the learned single Judge on the basis of the material placed before him came to the conclusion that "the dominant purpose appears to be to help the squatters to the utter prejudice of the petitioner who was not even consulted in the matter." It is thus obvious that the possession taken by those persons though unauthorisedly was taken to be possession taken by the acquiring authorities. No such situation arises here. Otherwise also, I find it difficult to reconcile with the ratio of this judgment while holding that the acquisition of property and taking possession thereof is equivalent to substantial deprivation of property rights and that meaning has to be assigned to the word possession as used in S. 48 of the Act. For this conclusion, the learned Judge has relied on the two Supreme Court judgments noted above. These judgments relate to the interpretation of the expression "acquired or taken possession" as used in Art. 31 as it originally existed in the Constitution.

7. After a perusal of these judgments, I find that the following meaningful observations made in Subodh Gopal's case (supra) completely escaped the notice of the learned Judge in Karimuddin's case (supra).

"I see no sufficient reason to construe the words "acquired or taken possession" used in clause (2) of Art. 31 in a narrow technical sense. The Constitution marks a definite break with the old and introduces new concepts in regard to many matters, particularly those relating to fundamental rights, and it cannot be assumed that the ordinary word "acquisition" was used in the Constitution in the same narrow sense in which it may have been used in pre-Constitution legislation relating to acquisition of land. These enactments, it should be noted. Related to "land" whereas Art. 31(2) refers to moveable property as well, as to which no formal transfer or visiting of title is necessary."

These observations make it abundantly clear that the concept and scope of

meaning of "taken possession" used in Art. 31 of the Constitution is widely different from that as in the Land Acquisition Act, 1894. A pre Constitution legislation. It is further clear that the word "possession" as used in S. 48 has narrow concept and meaning i. e. permanent actual physical possession of the land. Mere deprivation of the use of a particular land for a particular purpose by a land owner does not mean that he has either been dispossessed or the acquiring authorities have taken possession of that. Admittedly, the respondent-authorities never took permanent physical possession of the land in question. Thus they, to my mind, are well within their right to abandon the acquisition as they the only remedy available to the petitioner is by way of damages for which essentially this is not the forum.

8. At this stage, learned counsel for the petitioner seeks to argue that even under the Indian Electricity Act, 1910, under which have acted, he is entitled to some sort of damages and he should be granted that relief to that extent. Firstly, no such case has been pleaded in the petition ; secondly and concededly the forum for the assessment of those damages is the District Magistrate concerned.

9. In the light of the above. I find no merit in this petition and dismiss the same but with no order as to costs. C. M. No. 2380 of 1980 is allowed.

10. Petition dismissed.