
(1992) 04 P&H CK 0052

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition 14121 of 1991 (O&M)

Avtar Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 07-04-1992

Acts Referred:

Citation : (1992) 2 LJR 448 : (1992) PLJ 367 : (1992) 2 RRR 342

Hon'ble Judges : M.R.Agnihotri, J and N.K.Sodhi, J

Advocate : J.S. Toor, Advocate, H.S. Toor, Sr. Advocate, S.K. Bhatia, D.A.S. Punjab, Sanjay Majithia, Advocate., Advocates for appearing Parties

Judgement

N.K. Sodhi, J.—About 27 acres, 4 kanals 9 marlas of land including an area of 45 kanals 17 marlas belonging to petitioner No. 1 and 30 kanals marlas belonging to petitioner No. 2 in village Manipur Chaiyan, Tehsil and District Ropar was notified on June 18, 1991 for acquisition under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") at Public expense for a public purpose, namely, for the construction of SYL Ropar Power House for the Punjab State Electricity Board. Earlier, the State of Punjab had acquired land for the proposed Hydrel Channel from point "A" to "C" as shown in the certified copy of the plan placed on the record as Annexure R1 through a separate notification issued under Section 4 followed by a notification under Section 6 of Act. The respondents had taken possession of the acquired land at site from point `A" to `C" and the award of the Land Acquisition Collector in regard to that acquisition had also been announced. The excavation of earth work from point `A" to `C" had been completed to the extent of about 30 per cent for the proposed Power House and the Government required land for the excavation of the entire length of the Hydrel Channel point `C" to "F" as a result whereof the impugned notification dated June 18, 1991 acquiring the aforesaid area was issued. Since the land for the aforesaid purpose from point "A" to `C" had already been Power acquired and construction work in regard to the Power House and the Hydrel Channel was in progress, acquisition of land from point "C" to "F" which constituted the second limb of the Hydrel Channel, being obviously of an urgent

nature was sought to be acquired and a proposal in this regard was sent to the State Government impressing upon its urgency involved so that 9900 Cusecs of water could be merged in river Satluj at point "F". Accordingly, the urgency provisions were invoked under Section 17 of the Act on the receipt of the report dated December 4, 1990 received from the Deputy Director. The notification dated June 18, 1991 is challenged "in the present writ petition under Article 226 of the Constitution on the following three grounds :

i) There was no urgency so as to invoke the "provisions of Section 71 the Act whereby the petitioners were deprived of their right to file objections under Section 5A of the Act.

ii) The preliminary inquiry which is usually made before the issuance of the notification under Section 4 of the Act was actually made on October 16, 1991 long after the notification had been issued.

iii) Instead of acquiring the land of the petitioners an alternative of wide" any of the natural drains along the land under acquisition when available with the respondents by which the same purpose could be achieved should have been adopted and therefore the present acquisition was liable to be struck down.

2. Having heard counsel for the parties at length and after going through their pleadings and documents including the certified copy of site plan of Ropar Hydrel Power House, we find no merit in any of the contentions advanced on behalf of the petitioners.

3. As regards the first contention, we are satisfied that the matter involved utmost urgency as on the land from point `A" to `C" which already stood acquired, the construction work of Ropar Hydrel Power House as also the proposed Hydrel Channel was already in hand and with a view to complete the project including the entire length of the Hydrel Channel from point `C" to `F" the present acquisition was absolutely necessary and urgently required. This is clear from a bare look at the plan. Moreover, in the preliminary inquiry made by the respondents prior to the issuance of the impugned notification on the basis of which land in question was sought to be acquired and urgency provisions invoked, the Executive Engineer, Civil Construction & Survey Division, Rajpura, had as per his communication dated February 6, 1991, mentioned the following three reasons for invoking the emergency provisions which were accepted by the State Government :

1. That the work for the construction of Power House Ropar is already in earnest progress. In case this land is not acquired immediately, it will adversely affect the progress of the Power House.

2. That the work of Hydrel (Escape) Channel is being done by the Punjab State Electricity Board. The work by the PSEB could only commence provided if the land is acquired immediately, since Hydrel Channel is essential limb of the Power House.

3. That the funds which have been released will lapse after 31.3.1991. It is, therefore, important to acquire this land before 31.3.1991."

In the light of the reasons given by the department and accepted by the State Government, there is no doubt in our mind that the matter was of an urgent nature and we accordingly hold that the urgency provisions were validly invoked.

4. Again the report of the concerned Deputy Director, dated 4.12.1990 and the communication dated February 6, 1991, from the Executive Engineer, Civil Construction & Survey Division, Rajpura (Annexures R3 and R4 with the written statement make it abundantly clear that the State Government had done its home task and had made preliminary enquiry before issuing the impugned the notification on June 18,1991.

In support of the third contention, it was strenuous urged by learned counsel for the petitioners that there were two natural drains of Dugri Ahmedpur (Chandpur nallah) and Tapal Majri Choe (Mianpur Row) having their origin on both sides of village Dugri and they run parallel to the land now sought to be acquired including the land of the petitioners and be put these drains (nallahs) could be put into use for routing the proposed Hydel Channel for the Power House instead of acquiring the land in question which is said to be of good quality. This argument too has to be noticed only to be rejected. In the course of preliminary enquiry and during survey of the site in question, all the possible alignments were studied including the alignment along the nallahs. While the route of the proposed Hydel Channel ABCDEF as shown in the site plan was approved as being most feasible, the other alternative of alignment along the nallahs was not approved due to the following considerations which weighed with the experts.

5. The alignment along nallah was not approved due to the following considerations :

The route along Chandpur Nallah cannot be followed as near as the tail of the Nallah, there is a village named Alampur on its both sides and the village habitation has to be uprooted to a much extent.

ii) The Nallah acts as natural drainage for a vast area and if any obstruction is created for the natural water flow then the sheet flow of water during rainy season will submerge a vast area of land.

iii) The Nallah carries a lot of silt and if these are allowed to merge into the Hyde Channel then crossection of the channel will have to be increased substantially due to two reasons, firstly to carry additional water and secondly to take into account the effect of silt which is likely to be deposited during rainy season which the Nallah carries in abundance.

iv) Power House will have to be closed frequently for operation of silt removal. This will result into heavy energy losses."

When all the possible alternative for the construction of the proposed Hydel

Channel were considered by those who are experts in their own field and they having accepted one of the available alternatives, it is obviously not for this Court under Article 226 to substitute its own view/opinion and direct the respondents to resort to the other alternative whereby the land of the petitioners could be kept out of acquisition. The reasons mentioned by the authorities for not approving the alignment along the nallahs seem to be quite valid and even otherwise, it is quite clear from the site plan that since the area from point "A" to "C" already stood acquired and the Power House is being constructed at point "B" the respondents had little choice but to acquire the land in question.

In the result, there is no merit in the writ petition and the same stands dismissed with no order as to costs.