
(1969) 04 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 602 of 1969

Bharat Singh and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 23-04-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Land Acquisition Act, 1894 — Section 17(1), 17(2), 17(4), 4, 4(1)

Citation : AIR 1970 P&H 29

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : Bhal Singh Malik, for the Appellant; C.D. Dewan, General, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Narula, J.—The notification u/s 4 read with Section 17(2)(c) of the Land Acquisition Act (1 of 1894) (hereinafter called the Act) issued by the Governor of Haryana on January 2, 1969, and the notification issued by the same authority on the same day u/s & read with Section 17(2) of the Act (collectively marked "A") have been impugned in this petition under Articles 226 and 227 of the Constitution on the solitary ground that the State Government had no jurisdiction to invoke Clause (c) of Sub-section (2) of Section 17 of the Act for the public purpose of construction of the newly proposed District Jail, Rohtak as the said purpose cannot be read ejusdem generis with the purposes mentioned in Clauses (a) and (b) of Sub-section (2) of that section. The abovesaid proposition urged by the petitioners was sought to be supported by the following observations of a Division Bench of this Court (D. K. Mahajan and Shamsheer Bahadur, JJ.) in *Murari Lal Gupta v. State of Punjab* AIR 1964 P&H 477:--

"The object of acquisition in the instant case is the construction of the shoo for storing text books -- a purpose which cannot be in parity with the objects specified under Clauses (a) and (b) of Sub-section (2) of Section 17 on the

principle of ejusdem generis. The matter of acquisition may be of importance, but there is nothing to indicate that it is of "urgent" importance to justify the exclusion of the procedure prescribed u/s 5A of the Land Acquisition Act. The purpose might well be served by requisitioning some property till the acquisition is made under the normal procedure prescribed in the Act. Mr. Anand Swarup for the petitioner further relies on a decision of S. Velu Pillai, J. in *Madhavi Amma Vs. Revenue Divisional Officer, Kozhikode and Others*, , where it was held that it is imperative that Government must hold a definite opinion within the meaning of Section 17(4) as to whether it is the provisions of Sub-section (1) or of Sub-section (2) which are applicable to a given case. It is important to remember that the dispensation of the operation of Section 5A is a serious matter and according to the view taken by S. Velu Pillai, J. the notification on the face of it must show that the Government really has directed its mind whether acquisition has to be made under Sub-section (1) or Sub-section (2) of Section 17. Far from so showing, the Government in its written statement is itself not clear whether the land has been regarded as waste or arable under Sub-section (1) or it has been acquired for any of the specified purposes mentioned in Sub-section (2). Clause (c) of Sub-section (2) introduced by the Punjab Amending Act no doubt enlarges the scope of acquisition but it has to be read ejusdem generis with Clauses (a) and (b) where specific purposes for which acquisition can be made u/s 17 are definitely set out. Clearly, the construction of a depot for sale of text books is not in line with the purposes specified in Clauses (a) and (b) of Sub-section (2) of Section 17 and it cannot be defended on the specious ground that the Government considers the purpose to be of urgent importance."

Counsel also relied in this connection on a subsequent judgment of Grover, J. in *Misri Lal v. Punjab State* 1966 68 PLR 503. It is, however, unnecessary to deal separately with *Misri Lal's* case 1966 68 PLR 503 as Grover, J. merely felt compelled to follow the Division Bench judgment in *Murari Lal Gupta's* case AIR 1964 P&H 477 while observing as below:--

"What was stated in that case, AIR 1964 Punj 477 can be most appositely applied to the present case. If Clause (c) has to be read ejusdem generis with the clauses which precede it, then there can be no manner of doubt that the acquisition in the present case which is meant for the setting up of a factory for the manufacture of printing machinery cannot be regarded to have anything in common with the purposes in Clauses (a) and (b), and, therefore, according to the law laid down by the Bench, the decision on the issues in question must be given in favour of the plaintiff."

Nor is it necessary to refer in any detail to the judgment of a Division Bench of the Mysore High Court in *Thirumal-aiah v. State of Mysore* AIR 1963 Mys 255 on which substantial reliance was placed by the Division Bench of *Maha-jan and Shamsheer Bahadur, JJ.* in *Murari Lal Gupta's* case, particularly because of the law in respect of the jurisdiction of the Court to go into the question of factum of urgency having since been settled authoritatively by their Lordships of the

Supreme Court in Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, . The Supreme Court has uttered the last word on the subject in Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, by observing as follows:--

"It is true that the opinion of the State Government which is a condition for the exercise of the, power u/s 17(4) of the Act, is subjective and a Court cannot normally enquire whether there were sufficient grounds or justification of the opinion formed by the State Government u/s 17(4)..... But even though the power of the State Government has been formulated u/s 17(4) of the Act in subjective terms the expression of opinion of the State Government can be challenged as ultra vires in a Court of law if it could be shown that the State Government never applied its mind to the matter or that the action of the State Government is mala fide."

In view of the abovesaid pronouncement of the Supreme Court, it appears to be wholly unnecessary to refer to the earlier Full Bench judgment of this Court in Murari Lal Gupta Vs. The State of Punjab and Another, on which the learned Advocate-General for the State of Haryana has placed reliance in support of the proposition that the question of urgency is not at all justiciable by a Court.

2. It has been recently held by a Full Bench of this Court (D. K. Mahajan and Shamsher Bahadur, JJ. and myself) in Letters Patent Appeal No. 20 of 1966, Printers House (P) Ltd., New Delhi v. Misri Lal, decided on April 18, 1969 (Punj FB) that the principle of ejusdem generis does not apply to Clause (c) of Sub-section (2) of Section 17 of the Act, and that observations to the contrary in Murari Lal Gupta's case AIR 1964 P&H 477 do not lay down the correct law. It has been held by the Full Bench that each of the three classes forms a separate class by itself and the different classes of urgency named in Clauses (a), (b) and (c) of Section 17(2) form an independent genus by themselves and are not mere species of one common genus, in this view of the matter, the main argument of the learned counsel for the petitioners fails.

3. This leaves me with only two questions. The first is whether on the facts, admitted or proved, in this case, it can be said that the declaration of urgency in respect of the land required for the construction of a new jail at Rohtak has been made without the State Government applying its mind to the matter or whether the urgency provision has been invoked merely as a colourable transaction. In paragraph 5 of the return of the State, it has been averred that the existing jail building at Rohtak is in a dilapidated condition, that part of it has already come down, that the accommodation is altogether insufficient and there is no scope for its expansion under the existing conditions. It has then been added in Clause (a) of paragraph 7 that the notifications were issued by the Government after a careful consideration of the whole matter and that the land is needed urgently as the jail which is necessary to house the offenders sentenced to imprisonment in accordance with law, is directly linked with the law and order of the country, and, therefore, the matter was really of urgent importance, and it could not brook any

delay. As settled by the Supreme Court in *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, this Court cannot substitute its own opinion for the subjective opinion of the State Government. On the material placed on the record of this case, I am satisfied that it is impossible to say that the State Government has not applied its mind to the question of urgency or that the urgency provision has been invoked mala fide.

4. The last submission made by the counsel in support of this writ petition is based on certain observations in the judgment of the learned Judicial Commissioner of Manipur in *Heisnam Chon-jon Singh v. Union Territory of Manipur* AIR 1968 Man 45. It was observed in that case that three conditions are necessary to be satisfied under Sub-sections (1) and (4) of Section 17 of the Act, if the Government wants to proceed under those provisions; (firstly), there must be urgency, (secondly), the land must be waste or arable, and (thirdly) there must be a subsequent publication of the declaration dispensing with the provisions of Section 5A of the Act, after the preliminary notification under Sub-section (1) of Section 4 of the Act is made. Learned counsel submits that out of the three ingredients necessary to vest in the State Government the jurisdiction to invoke Section 17(4), the last one is missing in this case inasmuch as the notifications under Sections 4 and 17 were issued simultaneously though the notification u/s 17(4) could not be issued along with the notification u/s 4, but only subsequent thereto. I am unable to agree with the learned counsel in this behalf. With the greatest respect to the learned Judicial Commissioner of Manipur, I am unable to find any justifications for holding that the declaration u/s 17(4) must be made only subsequent to the issue and publication of the initial notification u/s 4(1). This part of the judgment of the learned Judicial Commissioner is not supported practically by any reasons. Learned counsel for the petitioner submitted that the expression "at any time after the publication of the notification u/s 4" in the following provision contained in Sub-section (4) of Section 17 supports the decision of the Judicial Commissioner of Manipur:--

"In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5A shall not apply, and, if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after the publication of the notification u/s 4, Sub-section (1)."

This argument of Mr. Malik appears to be misconceived. The words "after the publication of the notification u/s 4" refer to the notification u/s 4 which can be issued at any time after the notification u/s 4 and not along with it. It is nobody's case that the notification u/s 6 was issued simultaneously with the notification u/s 4. On the other hand, it is conceded that the Section 6 notification, though of the same date, was issued subsequent to the notification u/s 4. There is, therefore, no force whatever in this submission of Mr. Malik.

5. None of the contentions raised by the learned counsel for the petitioners having succeeded, I do not find my way to allow this petition, and accordingly

dismiss it with costs.