
(1974) 01 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No's. 871, 1252, 1253, 1263, 1299, 1313, 1349, 1391, 1393, 1459, 1489, 1733 and 2447 of 1973

Brahm Sarup and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 17-01-1974

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 16, 4, 4(1)

Citation : AIR 1975 P&H 26

Hon'ble Judges : R.N. Mittal, J

Bench : Single Bench

Advocate : S.M. Ashri, for the Appellant; C.D. Dewan, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.N. Mittal, J.—This judgment will dispose of Civil Writ No. 871, 1263, 1299, 1349, 1391, 1393, 1459, 2447, 1489, 1733, 1252, 1253 and 1313 of 1973 by which notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) have been challenged.

2. I am giving the facts from Civil Writ No. 1263 of 1973. The facts of the petition are that the petitioners are owners and in possession of the land in dispute situated in the revenue estate of Jind which was notified to be required for the planned development of the area of village Jind in tehsil and district Jind, by a notification u/s 4 of the Act issued on November 11, 1969 (copy Annexure "A"). Another notification u/s 6 of the Act was published in Haryana Government Gazette on September 19, 1972. The petitioners filed objections u/s 5A of the Act within the prescribed period without knowing the specific purpose for which the land was sought to be acquired as no such purpose had been indicated in the impugned notifications. The petitioners accepted the award under the provisions of the said Act under protest and their cases have been forwarded to the District Judge, Jind for enhancement of the compensation u/s 18 of the Act. The

notifications are illegal, void and without jurisdiction and are liable to be set aside. The learned counsel for the petitioners has vehemently argued that the notification u/s 4 does not clearly give the purpose for which the land had been acquired and, therefore, the petitioners were unable to file proper and cogent objections u/s 5A of the Act. In support of his contention, he placed reliance on *Tharoo Mal Vs. Puran Chand Pandey and Others*, wherein it is observed that a notification which does not comply with the essential requirements of Sub-section (1) of Section 4 of the Act must be held to be bad. He has also referred to *Munshi Singh and Others Vs. Union of India (UOI)*. In that case, a notification u/s 4 of the Act was issued stating that land was required for "planned development of the area". It was held by their Lordships of the Supreme Court that mere words "planned development of the area" in the notification were wholly insufficient and conveyed no idea as to the specific purpose for which the lands were to be utilised. It was further observed that there was no indication whatsoever whether the development was to be of residential and building sites or of commercial and industrial plots nor was it possible for any one interested in the land sought to be acquired and the development made by the Government or whether the owners of properties would be required to develop a particular area in a specified way. Consequently, the notification was held to be illegal, I am bound by the aforesaid observations. In the circumstances, I am of the opinion that the notification issued u/s 4 of the Act is illegal.

3. The learned counsel for the respondents has argued that the petitioners after the issuance of notifications, accepted the compensation on December 14. 1972, December 15. 1972 and February 2. 1973. They having felt dissatisfied from the amount of compensation made applications u/s 13 of the Act on January 12, 1973, January 22, 1973 and January 23, 1973 for referring the matter to the Civil Court for enhancing the compensation. Mr. Dewan has further argued that the possession of the land in question was taken on December 14. 1972, which had been transferred to Estate Officer, Jind so that the same could be developed and utilised for the purpose for which it had been acquired. He, therefore, argues that the petitioners are not entitled to relief in a writ petition under Articles 226 and 227 of the Constitution of India at this late stage. On the other hand, the learned counsel for the petitioners states that the notification u/s 4 is void and will be deemed to have not come into operation. He also argues that the said notification will not become legal merely because the petitioners accepted the compensation or that they filed the writ petitions at a late stage. I have heard the respective contentions of the learned counsel for the parties at considerable length. It is a well settled principle of law that the relief under Article 226 of the Constitution of India is discretionary. It appears from the narration of the facts given above that the petitioners never challenged the notification u/s 4 of the Act on the ground of vagueness when it was published. When the compensation of the land acquired was determined by the Collector, they never raised the objection about the illegality of the notification. They, on the other hand,

accepted the compensation when offered to them and filed objections for enhancement of the same. They thus accepted the proceedings initiated under the Act. Therefore, they cannot be allowed to challenge the notification u/s 4 at a late stage merely because the purpose for which the land in dispute was going to be acquired had not been given clearly. u/s 16 of the Act, the Government becomes owner of the land notified as soon as possession thereof is taken by it. In the present case, the Government has become owner of the land as its possession had been taken by it on December 14, 1972. For reasons best known to the petitioners, they did not challenge the notification u/s 4 immediately after that. The learned counsel for the petitioner has urged that the possession of the land has not been taken by the Government and the petitioners are still cultivating the same. He has placed reliance on para 2 of the Return wherein it is stated that the land was taken possession of by the State on December 14, 1972 and that no compensation was allowed for the standing crops and the petitioners were permitted to remove them by April 30, 1973. From reading the aforesaid para of the Return, it may be said that the respondents obtained symbolic possession of the land in dispute and not the actual possession. Section 16 of the Act does not say that actual possession is necessary for becoming owner of the acquired land. For the aforesaid reasons, it cannot be held that the Government have not become owner of the land in dispute merely because the petitioners were allowed to remove the crops standing on the land in dispute,

4. *Tn Mohammad Habibullah Sahib and Others Vs. Special Deputy Collector for Land Acquisition Madras and Others*, , it has been observed by a Division Bench that where a petitioner had already made an application for reference claiming increased compensation he could not be permitted to challenge the acquisition itself and at the same time claim increased compensation. I am in respectful agreement with the aforesaid observations. On one hand, the petitioners accepted the compensation without representing that their land was being illegally acquired and made applications for enhancement of the same and, on the other, after passing of several months they filed the writ petitions. They cannot be allowed the discretionary relief in the circumstances of the present case.

5. In *Ajit Singh Vs. State of Punjab and Another*, , a scheme of consolidation was challenged on the ground that Shri Gurkirpal Singh, Consolidation Officer did not have a legal authority to prepare and publish the same. It was argued that the scheme was invalid and could not be made valid by appointing the Consolidation Officer retrospectively by a notification as neither the Government nor their delegate could appoint a Consolidation Officer retrospectively. It was observed by Hon'ble the Supreme Court as follows :--

"It seems to us clear that before a person can start acting as a Consolidation Officer he must be appointed as such. Before he is appointed he has no authority to exercise any of the functions of a Consolidation Officer. What he does purporting to act as a Consolidation Officer has no binding force on the owners

and other persons affected in the estate. The Government cannot by appointing him retrospectively clothe him with authority retrospectively. This can be done only by the Legislature subject to the provisions of the Constitution.

But the appellant cannot succeed on these grounds because the High Court, in its discretion, has held that the appellant is not entitled to rely on these objections because of laches. We cannot say that the discretion has been exercised wrongly. After the notification was published on May 11, 1962, appointing Gurkirpal Singh retrospectively with effect from November 4, 1961, it must have been clear to the appellant that Gurkirpal Singh had not been appointed Consolidation Officer before he started preparing consolidation proceedings. No adequate explanation has been given for the delay. Further it has not been shown that there has been any manifest injustice,"

The above observations are applicable to the present case on all fours. The petitioners have not suffered any injustice in the present case from acquisition of their holdings.

6, The learned counsel for the petitioners has placed reliance on *Khub Chand v. State of Rajasthan*. AIR 1967 SC 1974, wherein it was observed that if the notification first issued under S, 4 of the Act without complying with the said mandatory direction it is void and the hind acquisition proceedings taken pursuant thereto would equally be void. In that case, the High Court had refused to grant the relief on the ground that the writ petition was belated. It was observed by Hon''ble the Supreme Court that the appellants had questioned the jurisdiction of the tribunal from the outset and refused to take part in proceedings for determination of the compensation. The landowners in that case came to know that the awards were made by the Collector on September 15. 1960 and they filed the petition on October 26, 1960. In the circumstances it was held by Subba Rao, C. J. (speaking for the Court) that there was no such inordinate delay as to preclude the appellant from invoking jurisdiction of the High Court under Article 226 of the Constitution of India. The facts of the aforesaid case are distinguishable from those of the present one and the observations therein will not apply to it. In the aforesaid circumstances, the petitioners cannot be allowed to challenge the notification u/s 4 of the Act at such a late stage, especially when they had taken part in the acquisition proceedings before the Collector and accepted the compensation for the land acquired. Mr. Ashri says that Brahm Sarup, one of the petitioners in Civil Writs 1263 and 1299 of 1973 does not press his petitions.

7. The facts of Civil Writs 871, 1299, 1391, 1393, 1349, 1459 and 2447 of 1973 are the same and similar notifications have been challenged. No additional arguments were advanced in them. The facts of Civil Writs 1489, 1733, 1252, 1253 and 1313 of 1973 are also similar. The notifications in them are, however, of different dates and they relate to Faridabad. Same contentions have been made by the learned counsel for the parties in these writ petitions. For the reasons recorded above, I do not find force in the contentions of the learned

counsel for the petitioners made in these writ petitions.

8. I, therefore, dismiss all the writ petitions with costs. Counsel's fee in each case Rs. 50/-.