
(1963) 05 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1936 of 1962

Budhi and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 13-05-1963

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 17, 17(1), 17(2), 48, 48(2)

Citation : AIR 1964 P&H 300 : (1963) 2 ILR (P&H) 706

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : H.L. Sarin and K.K. Cuccria, for the Appellant; Harbans Lal and S.M. Sikri, General, for the Respondent

Judgement

Shamsher Bahadur, J.—The question which arises for determination in this petition under Article 226 of the Constitution relates to the competence of the appropriate Government under the Land Acquisition Act to alter the object of the acquisition from one public purpose to the other.

2. Land belonging jointly to the Petitioners, Budhi and five others, measuring 53 acres 6 kanals and 3) marls in village Majesar of Ballabgarh teshil in Gurgaoan district was acquired in pursuance of notification of the Punjab Government of 2nd September, 1960 (Annexure A) under Sections 4 and 17 of the Land Acquisition Act for "setting up a factory to manufacture) electric motors"." As the land was required urgently action for acquisition was taken u/s 17(2)(c) of the Act Under which land required "for a public purpose which in the opinion, of the appropriate Government is of urgent importance" can be entered upon and taken possession of by the Collector thereafter to "vest absolutely in the Government free from all encumbrances".

From the endorsement made In the notification appears that the land was acquired for the Indian Electric Tool Corporation, Post Office Box No. 3025 New Delhi-5, to whom its copy was sent for information. The notification was followed

by the usual declaration under the provisions of Section 6 of the Land Acquisition Act and u/s 7 the Sub-Divisional Officer Palwal was directed to take over the acquisition of the said land. This notification was also made on the same day and it was further mentioned that the Governor of Punjab in exercise of the powers u/s 17(2)(c) of the said Act was pleased to direct that the Sub-Divisional Officer and Land Acquisition Officer Palwal shall proceed to take possession of the land herein specified in accordance therewith.

A copy of this notice also was forwarded to the Indian Electric Tool Corporation, New Delhi, for information. According to the assertions made in the petition, the land so acquired was not transferred to the company for whose benefit the notification purports to be. By another notification of 3rd of October, 1962 (Annexure C) an area of land measuring 20 acres 1 kanal and 19 marlas out of the area of 53 acres 6 kanals and 3 marlas acquired by notification of 2nd of September, 1960, was transferred to Northern India Iron and Steel Co., Limited, New Delhi and Messrs. Manco Bevel Gear of India Limited, Faridabad for Installation of Steel Foundry Forge and C.I. casting unit and establishment of a factory to manufacture automobile gear etc. respectively. In the notification it was mentioned that the orders regarding the remaining area of 33 acres 4 kanals and 4 marlas would follow in due course.

3. According to the written statement of the Punjab State, the land acquired by the notification of 2nd of September, 1960, was not actually taken possession of till November, 1962 and the Petitioners had been permitted to remain in possession of it. The contention of the Petitioner is that the notification of 2nd of September, 1960 had lapsed and the acquisition should now be deemed to be subsisting only under the notification of 3rd of October, 1962. The object of the Petitioner is to get advantage of the rise in land prices during this interregnum. The cast of the Respondent-State is that the original notification is still operative and the appropriate Government is competent to divert the purpose of acquisition so long as it remained in the nature of a "public purpose".

There is no direct authority on the point and the learned Advocate-General relies on some observations made by a Division Bench of B.B. Ghose and Roy JJ. of the Calcutta High Court in Secretary of State Vs. Amulya Charan Banerjee and Others, , in which land had been acquired at the instance of the Calcutta Corporation. It had been urged on behalf of the claimants in that case that:

the corporation having acquired land on the south, for widening the Kalighat 1st lane, are not entitled to use any portion for some other purpose.

This contention is set out at page 877 and after examining the validity of the contention it was observed that:

a municipality is justified in using the land for any purpose for which the statute authorised it to use land although not for which it was professedly taken.

What happened in that case was that the land which, was acquired for a public

ghat by the municipality was used only partially for this purpose and was used partly for a market. In the opinion of the Court,

After acquisition the new owners have the ordinary rights of proprietors and may use their lands as they think fit for any purpose which does not infringe the rights of others and is not inconsistent with the purposes sanctioned by the statute under which lands have been taken.

The Bench relied also on the observations of their Lordships of the Privy Council in *Luchmeswar Singh v. Chairman Darbhanga Municipality* ILR 18 Cal 99 (PC), to justify the conclusion reached by it. Mr. Sikri relying on this authority further contends that no limitation has been placed on the power of the appropriate Government to acquire land for a public purpose and there is nothing in the provisions of the Land Acquisition Act to prohibit the appropriate Government to divert the land acquired for one public purpose for utilisation of another.

4. Reference may also be made to a Bench decision of three Judges of the Calcutta High Court (Chief Justice Sir Francis Maclean, Banerjee and Harington JJ.) in *Guru Das Kundu v. Secy of State*, 18 Cal 1 J 244. In this case the land was originally acquired for the purpose of a sewage depot but as a result of a claim for compensation on account of injurious affection it was suggested on behalf of the municipality that:

It would not use the land which they had thus acquired for a sewage discharge depot, that they have abandoned this intention, and that they are willing to have this expression of that present intention inserted in the decree.

it was observed by Chief Justice Maclean at p. 249 that:

It is unnecessary to express any opinion as to whether a public body which has acquired land under the Land Acquisition Act in this country, for one specific purpose, can subsequently abandon that purpose, and use the land so acquired for some other purpose for which they have not acquired it. For my own part I should have thought it very questionable.

Apart from doubting the proposition that diversion was possible no definite opinion was given by the learned Chief Justice and the other two Judges constituting the Bench did not specifically give their views on this question. This authority therefore, cannot be pressed into service for the proposition which is stated in its head-note that:

A public body which has acquired land in this country for one specific purpose, may not subsequently abandon that purpose and use the land so acquired for some other purpose for which they have not acquired it.

it is also to be observed that the primary question before the Bench in *Guru Das Kundu's* case, 18 Cal LJ 244 was concerned with the quantum of compensation and the question of the intended user of the land so acquired assumed importance in this context.

5. It has not been seriously contended that the, object of the second notification does not fulfil the requirements of the statute that the acquisition should be made for a public purpose, Mr. Sarin frankly conceded that the objection has been taken to avail of the maximum compensation as the prices of the property have been on the increase in the area where the land has been acquired and if the second notification is taken to be the date of acquisition the compensation would be fixed in accordance with the prices prevalent in 1962 and not in 1960 when the first notification was made. I see nothing in reason or principle to justify the contention of Mr. Sarin that the acquisition originally made on 2nd of September, 1960, must be deemed to have lapsed and for purposes of compensation the acquisition should be taken to have been made on 3rd of October, 1962.

It would be useful to make reference to Section 48 Which provides that the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. If the Government had been minded to withdraw from the acquisition of the land notified for acquisition on 2nd of September, 1960, there was nothing to preclude it from doing so. In such cases compensation has to be paid under Sub-section (2) of Section 48 and is to take account of the damage suffered by the owner in consequence of the notice or any other proceedings thereunder. When there was no withdrawal from acquisition it must be. deemed to have continued though the purpose of the acquisition may have been altered.

6. I need not linger long over the remaining two contentions which have been raised on behalf of the Petitioner. It is argued, in the first place, that a portion of the land in Rectangle No. 51 consists of constructions which cannot be the subject-matter of proceedings u/s 17, being neither waste nor arable land. Sub-section (1) of Section 17 authorises the Collector in cases of urgency to "take possession of any waste or arable land needed for public purposes or for a Company.

Sub-section (2) is Independent of Sub-section (1) and in Clause (c) as inserted by Punjab Act No. 47 of 1955, it is provided that "whenever land is required for a public purpose which in the opinion of the appropriate Government is of urgent importance" the Collector may immediately after the publication of the notice mentioned in Sub-section (1) and with the previous sanction of the appropriate Government enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances. It is important to note that Sub-section (2) is dealing with acquisitions which are not of waste or arable land though reference is made to the notice mentioned In Sub-section (1). Clause (c) of Sub-section (2) is related to Sub-section (1) only, with regard to the notice and not the nature of the land which can be made subject-matter of acquisition on account of urgency under this sub-section,

7. Finally, it is urged by Mr. Sarin that the declaration that land is required for public purpose can be made u/s 6 of the Land Acquisition Act only if as stated in

the proviso to Sub-section (1) the compensation is partly to be paid out of public revenue. It is argued that No. evidence has been adduced to show that the Government is making any contribution of its own from Public Exchequer. On the contrary the acquisition being for a limited company it must be presumed that the compensation is to be paid by the company for whose benefit the acquisition has been made. The preamble of the notification of 2nd of September, 1960, mentions that the land "is likely to be needed by Government at public expense for a public purpose...." This is sufficient for the purpose of this Court to show that the land is being acquired for a public purpose and compensation is to be paid out of public revenues.

8. In my opinion, "there is no force in this petition which fails and is dismissed. In the circumstances of the case would leave the parties" to bear their own costs.