
(1985) 02 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3356 of 1982

Darshan Singh and others	Vs	APPELLANT
State of Punjab and others		RESPONDENT

Date of Decision : 15-02-1985

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (1985) 02 P&H CK 0001

Hon'ble Judges : J.M. Tandon, J

Bench : Single Bench

Advocate : H.S. Sahni and Mr. Ranjan Lakhan Pal, for the Appellant; D.S. Brar, A.A.G. Punjab, for the State and Mr. L.M. Suri, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Tandon, J.—M/s Amrit Banaspati Company Limited Respondent had set up a Paper Manufacturing Unit, with an investment of about 6 crores and employing more than 700 persons, at Saila Khurd, Tehsil Garshankar, Distt. Hoshiarpur. The production in the Paper Unit started in 1981. The effluent of the factory alleged to be treated and cured was discharged in Nariala Choe which passes by its side. The residents of the nearby villages complained to the authorities that the Paper Unit was creating a public nuisance by the discharge of the effluent and it be not discharged in any part of the Sub Division, with the result that the Unit had to be closed. The order of the Sub Divisional Magistrate was assailed in Criminal Revision No. 329 of 1982 which was disposed of on 9th August, 1982(sic) This order reads:

This order may be read in the backdrop of order, dated May 20, 1982(sic), passed in this case. Before the passing of the said order, certain proposals in regard to finding a permanent solution for the discharge of the effluent from the works of the Petitioner-company, without causing any damage to the persons and property of the Respondents were under consideration, at is apparent from the order dated April 14, 1982 recorded by J.M. Tandon, J. in this petition. It

transpires that as a result of negotiations at Government Level, the Punjab Government issued notification, dated July 22, 1982, as per which some land in the area affected by the effluent discharge was acquired for the construction of a drain for disposal of the said discharge from the Petitioner Mill. The terms of the said negotiations along with the Notification mentioned above have been placed on the record by means of an affidavit on behalf of the Petitioners A reply to the said affidavit has also been filed and the Learned Counsel for the parties have been heard.

Mr. Sibal, Learned Counsel for the Petitioners states at the bar that in spite of the Notification issued by the State Government acquiring the land for the purpose of digging a drain, actual possession by demarcation of the acquired land has not so far been delivered to the Petitioners and hence the Petitioners are unable to dig out the drain Mr. Cuccuria, Learned Counsel appearing for the State states that he has no instructions in this matter and that after taking necessary instructions, he shall see that the needful is done at the earliest. Mr Sibal further under takes that the Petitioners shall dig and complete the drain within two months from the date when the actual physical possession of the land is handed over to them by demarcation. The Learned Counsel further states that the Petitioners stand committed to the undertaking already given by them in this matter. In these circumstances, no further order is required to be passed in this case which is disposed of accordingly.

2. The Government issued notification dated 22nd July, 1982 (P.8) u/s 4 of the Land Acquisition Act, 1894 (hereafter, the Act) for acquiring the land for construction of a drain for the disposal of effluent discharge of the Paper Unit. The relevant part of this notification reads:

... Whereas it appears to the Governor of Punjab that land is likely to be needed by the Government, at public expense, for a purpose, namely for the disposal of effluent discharge of A.B.C. Paper Mills, Saila Khurd, Tehsil Garshankar, District Hoshiarpur, it is hereby notified that land in the locality described in the specification below is likely to be needed for the above purpose.

Further in exercise of the powers under the said Act, the Governor of Punjab is pleased to direct that action u/s 17(2)(c) shall be taken in this case on the grounds of urgent importance of the public purpose and the provisions of Section 5-A of the said Act shall not apply in regard to this acquisition.

... ..

The Government issued another notification u/s 6 of the Act (P.9). The relevant part of this notification reads:

..... Whereas Governor of Punjab is satisfied that land is needed by the Government at public expenses, for a public purpose, namely, for the construction of drain for disposal of effluent discharge of A. B. C. Paper Mills Saila Khurd at village Raniaala, Saila Kalan, Paddi Khutti, Possi, Aiman Jattan, Chak

Sooni, Binjon Thinda and Behlolpur, Tehsil Garshankar. Distt. Hoshiarpur, it is hereby declared that the land described in the specification below is needed for the above purpose.

... ..

In view of the urgent importance of the public purpose, the Governor of Punjab in exercise of the powers u/s 17(2)(c) of the said Act, is further pleased to direct that the Collector, Land Acquisition, Industries Department Punjab, Chandigarh, shall proceed to take possession of the land hereinafter specified in accordance therewith.

The owners affected by the notification P.8 and P.9 were issued notices on 26th July, 1982 u/s 9 of the Act. A copy of one such notice is Annexure P.12. The Petitioners being affected by the notifications Annexures P.8 and P.9 have assailed the same as also the notices issued to them u/s 9 of the Act in the present writ petition.

3. The Learned Counsel for the Petitioners has argued that local publication of the impugned notification P.8 u/s 4 of the Act was not made with the result that the same is liable to be quashed. The contention is without merit.

4. Mr. K.S. Grewal Collector, Land Acquisition, Industries Department Punjab in his affidavit dated 24th September, 1983, has averred that the local publication of the notification P.8 dated 22nd July, 1982, u/s 4 of the Act was made in all the concerned nine villages on 23rd July, 1982, by best of drum and loud voice through the Chowkidars of the villages and reports to that effect were entered in the roznamcha waqfott of each village. The details regarding the date of publicity, the name of the village Chowkidar the mode of publicity and the number and date of the report made in the roznamcha waqiat of each village have been given detail by Mr. Grewal in his affidavit. In view of the clear averment made by Mr. Grewal, there is hardly any scope to hold that the local publication of the notification P.8 u/s 4 of the Act was not made in the locality.

5. The Learned Counsel has contended that the land in the instant case has been acquired for the Paper Unit (company) but the procedure prescribed in Part-VII of the Act has not been followed. The argument proceeds that it has been wrongly stated in the impugned notifications P.8 and P.9 that the land is required for public purpose. The impugned notifications are liable to be set aside for the added reason that they are the result of a colourable exercise of authority by the Government.

6. In the written statement filed on behalf of the State, it has been averred that the land has been acquired by the impugned notifications for a public purpose, in which the Government is financial participant to the extent of Rs. 100/-. A similar point came up for consideration in Jage Ram and Others Vs. State of Haryana and Others, and their Lordships observed:

In view of the pleadings referred to earlier it is not open to the Appellant to

contend that the State Government had not contributed any amount towards the cost of acquisition. We were informed at the bar that the State Government had contributed a sum of Rs 100/- towards the cost of the land which fact is also mentioned in the award of Land Acquisition Officer. That being so it was not necessary for the Government to proceed with the acquisition under Part VII of the Act.

The present case is squarely covered by the ratio of the observations of their Lordships, reproduced above. There is hardly any justification to doubt the averment made in the written statement filed on behalf of the State Government that she latter has contributed a sum of Rs. 100/- towards the cost of the acquired land Under these circumstances, the authorities were justified to state in the impugned notification that the land if being acquired for public purpose.

7. The Learned Counsel for the Petitioners had laid great stress that the contribution of Rs 100/- by the State is infact a colourable exercise of power on their part. The contention is without merit.

8. The Paper Unit has been set up by the company after securing requisite license from the authorities. The discharge of effluent is inherent in the working of the Paper Unit. It is necessary that the effluent discharge is disposed of properly. In this context, the construction of a drain is a necessity. In the absence of drain the effluent discharge would cause have to the residents living around. It is, therefore, difficult to hold that the financial contribution by the Government is a colourable exercise of power rendering the impugned notifications bad.

9. The Learned Counsel for the Petitioners has vehemently contended that the company has not set up a proper plant for treating and curing the effluent discharge of the Paper Unit end on this account the financial participation by the Government is a colourable exercise of power. This contention is neither here nor there.

10. The effluent discharge of the Paper Unit, whether cured or otherwise has to be disposed of properly. The effluent discharge after being treated and cured cannot be left unattended in the fields of other people. It is thus necessary that the effluent discharge of the Paper Unit, whether cured or not, is properly channelised and for this purpose a drain is necessity. It may, however be added that in the written statement filed on behalf of the company, it is averred that the effluent discharge is cured and treated.

11. The last contention of the Learned Counsel for the Petitioners is that urgency provision of Section 17(2)(c) of the Act has been wrongly invoked in this case, with the result that the Petitioner stood debarred from filing objections u/s 5-A of the Act. The impugned notifications are liable to be set aside on this ground. The contention is without force

12. The Paper Unit started production in 1981. The effluent discharge was put in

Nariala Choe passing by the side of the factory to start with. The residents of the nearby villages complained that the effluent discharge was creating public nuisance. The Sub Divisonal Magistrate initiated action against the company and it ended in the closing of the unit. The company filed a revision in the High Court, wherein an arrangement about the construction of a drain within a specified period was arrived at. The Paper Unit had been set up by the company in a backward area on the invitation of the Government. The company was allured by incentives. The Paper Unit was working when the impugned notifications were issued. Under these circumstances there was urgency for the expeditious construction of the drain for proper disposal of the effluent discharge. The Government was, therefore, fully justified in invoking the urgency provisions u/s 17(2)(c) of the Act.

13. In the result, the writ petition fails and is dismissed, with no order as to costs.