
(2006) 05 P&H CK 0216
In the Punjab And Haryana At Chandigarh

Devinder Singh and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 08-05-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 3, 38, 39, 4, 40

Citation : (2007) 145 PLR 337 : (2007) 2 RCR(Civil) 489

Hon'ble Judges : Mahesh Grover, J;Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Devinder Singh and Others Vs. State of Punjab and Others, AIR 2008 SC 261 : (2008) 2 CLT 654 : (2007) 12 JT 256 : (2007) 11 SCR 475 : (2007) 2 UJ 1223 : (2007) AIRSCW 6692 : (2007) 7 Supreme 206

Mahesh Grover, J.—On 15.2.2002, the State of Punjab issued a notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). The said acquisition was for a public purpose, namely for setting up of Ganesha Project of International Tractors Limited. The notification was published in the newspapers on 9.2.2002. Objections were invited from the interested persons and the petitioners submitted their objections which are on record.

2. The petitioners were heard and thereafter on 28.2.2003 the State issued a notification u/s 6 of the Act. The petitioners in all these writ petitions have challenged these notifications primarily on the ground that the State had resorted to the acquisition under the provisions of Part VII or the Act and that this was not an acquisition which was covered by Part II of the Act. The acquisition was being made for a company which was interested in profiteering and there was no public purpose involved. Further it was stated that the acquisition was totally against the provisions of Part VII of the Act and, therefore, the acquisition deserves to be quashed.

3. Having broadly set out the contours of the factual aspects of the case and the legal challenges made by the petitioners to the action of the State, we now propose to go into the matter in detail and deal with the submissions made by the learned Counsel for the petitioners.

4. The first and foremost submission made by the learned Counsel for the petitioners is that the acquisition is for a company and not in pursuance to any public purpose, hence the present acquisition is one which has been made under the provisions of Part VII of the Land Acquisition Act and not under the provisions of Part II and since the acquisition is under Part VII, the procedure is envisaged therein ought to have been followed and any violation of the provisions contained in Part VII would result in the entire acquisition proceedings being vitiated.

5. Building up his case on this premise he went on to say that the impugned notification is vague, inasmuch as it does not define the purpose of acquisition clearly and therefore, this has prejudiced the rights of the petitioners.

6. Further, the provisions of Sections 38 to 44 have to be read in conjunction with each other and violation of any part of these provisions would render the entire acquisition void. Sections 38, 40, 41, 42 and 44-B are extracted herein as the entire submissions of the learned Counsel for the petitioners centre around these provisions:

38. Omitted by Act 68 of 1984, (Section 21 w.e.f. 24.9.1984).

38-A....

39....

40. Previous enquiry:

(1) Such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector u/s 5-A, Sub-section (2) or by an enquiry held as hereinafter provided:

(a) That the purpose of the acquisition is to obtain land for the erection of dwelling house for workmen employed by the company or for the provisions of amenities directly connected therewith; or

(aa) That such acquisition is needed for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for public purpose; or

(b) That such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such an officer at such time and place as the appropriate Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and

compel the production of documents by the same means and, as far as possible in the same manner as is provided by the Code of Civil Procedure, 1908 in the case of a Civil Court.

41. Agreement with appropriate Government.- If the appropriate Government is satisfied after considering the report, if any, of the Collector u/s 5-A, Sub-section (2), or on the report of the officer making an inquiry u/s 40 that the proposed acquisition is for any of the purposes referred to in Clause (a) or Clause (aa) or Clause (b) of Sub-section (1) of Section 40, it shall require the company to enter into an agreement with the appropriate Government, providing to the satisfaction of the appropriate Government for the following matters, namely:

- (1) The payment of the appropriate Government of the cost of the acquisition;
- (2) The transfer, on such payment of the land to the company;
- (3) The terms on which the land shall be held by the company;
- (4) Where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided;
- (4-A) Where the acquisition is for the construction of any building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose the time within which, and the conditions on which, the building or work shall be constructed or executed; and
- (5) Where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.

42. Publication of agreement.- Every such agreement shall, as soon as may be after its execution, be published in the official Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this act.

43. ...

44. ...

44-A. ...

44-B. Land no to be acquired under this part except for certain purpose for private companies other than government companies - Notwithstanding anything contained in this Act, no land shall be acquired under this part, except for the purpose mentioned in Clause (a) of Sub-section (I) of Section 40, for a private company which is not a Government company.

Explanation.- "Private Company" and "Government Company" shall have the meanings respectively assigned to them in the Companies Act, 1956 (1 of 1956).

7. Learned counsel for the petitioners submitted that the above reproduced provisions of the law contemplated broadly that there has to be an agreement executed between the government and the company before the government grants its consent for resorting to the acquisition and that before giving such consent appropriate government has to be satisfied either on the report of the Collector u/s 5-A or by an enquiry that the purpose of acquisition is: i) to obtain land for erection of dwelling house for workmen employed by the company; ii) that such acquisition is needed for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose; and iii) such acquisition is needed for construction of some work which is likely to prove useful for the public. Apart from this the appropriate government had to be satisfied after considering the report of the Collector u/s 5-A or by making an enquiry itself u/s 40 that the proposed acquisition for any of the purposes mentioned above exists then the government shall require the company to enter into an agreement with it and the terms, such as payment of compensation, transfer of land and other such factors would be incorporated in the agreement.

8. Pointed attention was also made to the provisions of Section 44-B of the Act which shows that no land shall be acquired under this part except for the purpose mentioned in Clause (a) of Sub-section (1) of Section 40 or for a private company which is not a government company.

9. In the background of these provisions of law the counsel for the petitioners submitted that there was no valid agreement between the government and the company as is envisaged under the provisions of Sections 39, 40 and 41. There was no enquiry by the government and the notification u/s 4 was vague, inasmuch as it does not provide as to what is Ganesha Project and that the agreement comes into existence on the very same date when the notification u/s 6 of the Act is issued i.e. On 27.2.2003 which shows that the action of the respondents was a colourable exercise of power.

10. The injustice according to the petitioner was aggravated as Section 5-A of the Act was a valuable right available with the petitioners and unless the petitioners knew as to for what purpose the acquisition was being made they could not object to the same. The respondent-State in this case has miserably failed to define the purpose of acquisition and thereby the rights of the petitioners u/s 5-A stood violated. The acquisition could not be sustained because the land could be acquired only for the purpose as envisaged u/s 40(a) of the Act and not beyond that. But here the purpose of acquisition was only to enrich the company as by no stretch of imagination could it be said that any public purpose existed. No public or sovereign benefit was going to accrue from this acquisition which was purely for the private benefit and, therefore, the entire acquisition deserves to be quashed.

11. It was also stated on behalf of some of the petitioners that the respondent No. 5-company has not complied with the provisions under the Pollution Control

Act and has not taken the necessary permission and, therefore, the company was not serious in its intent to start any project in the area and the purpose was only to grab the land to enrich itself.

12. The respondents, on the other hand, submitted that acquisition was for a public purpose and the provisions of Part VII were not attracted and it was actually an acquisition under the provisions of Part II of the Act. Once the acquisition is resorted to under the provisions of Part II of the Act, then the provisions of Part VII are not attracted at all.

13. There was a valid agreement executed between the Government and the company by which the company had undertaken to pay the entire compensation to the landowneRs. The petitioners had filed objections u/s 5-A which were duly considered and a detailed report was submitted and it is only thereafter that further proceedings were conducted by the respondents. The petitioners were not prejudiced in any manner. The acquisition was within the domain of the State and the only thing that the petitioners were entitled to was adequate compensation. This factor had been duly taken care of by the company. The Government had also contributed towards the cost of the acquisition and this brought the present proceedings within the domain of "acquisition for public purpose".

14. Respondent No. 5 which is the company for whose benefit the land had been acquired submitted that the acquisition was perfectly valid and that the company was involved in the manufacturing of tractors and by setting up a unit in the proposed area of acquisition the company intended to expand its activities which would result in employment to a number of persons and would also benefit public at large. As far as the objections regarding non-compliance of the provisions under the Pollution Control Act are concerned, it was submitted by the learned Counsel appearing for respondent No. 5 that they could resort to such provisions only after they had set up the unit. He also reiterated the argument that the acquisition was under the provisions of Part II and the provisions of Part VII need not be complied with.

15. We have heard the leaned counsel at great length. The primary question that is to be answered is whether the acquisition has been made under the provisions of Part II or under the provisions of Part VII of the Act.

16. Before we embark upon to answer the questions raised in the petition, we deem it appropriate to refer to the notification issued u/s 4 of the Act. The relevant portion of which reads as under:

Whereas it appears to the Governor of Punjab that land is likely to be required to be taken by the Govt. at the public expense, for a public purpose, namely for setting up of Ganesha Project International Tractors Ltd. at village Chak Gujran, Tehsil & Distt. Hoshiarpur, it is hereby notified that the land in locality described below is likely to be required for the above purpose.

17. The purpose as spelt out in the notification was "for setting up of Ganesha Project, International Tractors Limited". The objections filed by the petitioners u/s 5-A of the Act show that the petitioners were fully aware of the purpose of the acquisition and in para 8 and 9 thereof they had categorically objected to the setting up of the project involving manufacturing of tractors. The objections as extracted herein leave no room for doubt that the petitioners were conscious of the purpose of acquisition:

8. That the proposed installation of the Factory in the name of Ganesha Projectors International Tractors Ltd. is against the interest of the locality, the details of which have also been mentioned in the reply dt. 4.3.2002 submitted by the Objector. Sonalika International Tractor Ltd. already exists near the land in question.

9. That the objectors are cultivating the land or the last over 25 years, it is consolidated at one place where in the objector has installed electric motors and planted popular trees around the field. The objectors did not want that the land in question be acquired since it is against their interest and objectors are dependent on this acquired land. The Agriculturist/Farmer is entirely dependent on his land for his livelihood. There are various projects in the name of Escort Tractors, Mohindra Tractors, Massy Ferguson Tractors and so many other tractors companies/industries fulfilling the needs of the public and as such there is no need at all of the proposed industry to be set up in the lands of the objectors.

18. In view of the fact that the purpose of notification was clearly stated which was met with specific objections from the petitioners, we hold that the notification cannot be termed to be vague. The petitioners have responded to it by making categorical objection to the same and even if it were assumed that the notification was not happily worded, still the petitioners could not show any prejudice caused to them, as they had taken the relevant objections indicating their awareness of the project. A perusal of the notification also shows that it was for a public purpose and at public expense.

19. Acquisition of land is a serious matter. The effect of an acquisition often is deprivation of valuable property of an individual. Great care and caution should be exercised before any land is subjected to acquisition. At the same time once the proceedings have been initiated they cannot be made a victim on the guillotine of technical objections. A person alleging violation of any procedure must also show the prejudice which has been caused to him on account of the State not adhering to the procedure of law and complying with the safeguards as set out in the Act. In the instant case the petitioners have not been able to show any prejudice caused to them. The entire exercise apparently was for a public purpose. That being so the courts would not step in to scuttle the acquisition proceedings meant to benefit the public at large.

20. Public purpose has been a subject of judicial interpretation since long.

21. The Supreme Court in *State of West Bengal and Another Vs. Surendra Nath*

Bhattacharya and Another, observed that the words "public purpose" are not to be interpreted in a restricted sense but takes colour from the nature of the industry itself, the articles that it manufactures and the benefit to the people that it subserves.

22. To our minds the words "public purpose" do not signify any static concept. Like shifting sands it would assume different connotation at different points of time. The needs of the public necessarily change and the courts have a duty to respond to such changes by interpreting the words "public purpose" in such context. The concept of "public purpose" as such is fluid. It changes when the society changes, or when the political philosophy demands a change. All the institutions then have a duty to enhance the cause of such public purpose

23. To establish as to what would be a public purpose we would also have to understand as to what company was to do with the acquired land. The company already has an existing unit on the adjoining land and it intends to set up a project as an expansion plan for manufacturing tractors. The purpose is unmistakably for the general good of the country particularly from the economic point of view. An overall picture of the activities of the company has to be kept in mind while assessing the public purpose. Manufacturing of tractors by the company on the land sought to be acquired would essentially be for the good of the people and the economy at large. We would also like to refer to the report of the Government in which they have referred to the benefits that are going to accrue to the public and the good that it is going to do to the economy. The relevant portion of the report is extracted herein:

In the case of International Tractors Ltd. the company has entered into an agreement with a French company named Renault Agriculture France for manufacture of latest technology tractors. Renault Agriculture France holds 20% equity in the company. Production of these latest technology tractors will boost export, which will contribute to the general welfare and prosperity of the whole community.

Therefore, in view of the facts and the relevant law as mentioned above, it is proved beyond doubt that the profits have actually gone to the general public....

24. We have no doubt that the land was acquired for a public purpose even though the acquisition had been made for the company.

25. It was held in *Kanpur Development Authority v. Mahavir Sehkhari* 2005 (10) S.C.C. 320 that notification u/s 4 cannot normally be quashed unless it suffers from an incurable irregularity such as total vagueness in regard to the property to be acquired and in regard to the public purpose that even if no opportunity of hearing had been given to the respondents that would only result in quashing of the notification u/s 6 but not to Section 4.

26. Deriving strength from these observations we have no hesitation to hold that in the instant case the land was actually acquired for a public purpose and was

not a result of colourable exercise of power. The petitioners were given an opportunity of hearing which they had availed of. They had also taken up all the objections regarding the setting up of the tractor unit and, therefore, they were not prejudiced on any score whatsoever.

27. The land in the instant case was sought to be acquired for a company and, therefore, the petitioners tried to set up a case that since the land was being acquired for a company, so no public purpose was being served. The crucial aspect in such cases would be as to who was financing the acquisition and if the government was not contributing to meet the cost of acquisition then it could not be termed to be an acquisition for a public purpose and the provisions of Chapter VII could not be given a go bye.

28. The definition of "public purpose" as specified in Section 3(f) of the Act is as follows:

(f) the expression "public purpose" includes....

(i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State:

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing health or slum clearance scheme sponsored by Government, or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a cooperative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for companies;

29. The acquisition of the land for companies is excluded from the purview of the expression as given in Section 3(f) of the Act. No doubt if one were to construe these provisions narrowly and not blend them with the scheme of the Act in its totality then the conclusion, that there is a dichotomy, is inescapable. The Supreme Court in *Pratibha Nema and Others Vs. State of M.P. and Others*, has held that the provisions of Part II and Part VII are not mutually exclusive.

30. The distinction between the acquisition made by the State under Part II of the Act and that made under Part VII is regarding the source of funds which would cover the cost of the acquisition and the public purpose which is involved in the acquisition.

31. We now proceed to assess as to whether the present acquisition is for a public purpose and that whether this acquisition would be under the provisions of Part II of the Act or it would be covered under the provisions of Part VII.

32. We have already held that the acquisition was for a public purpose and now the next question to be determined would be as to who is going to bear the cost of acquisition of the land. The Act nowhere provides as to in what ratio is the State to contribute towards the cost of acquisition when it resorts to acquisition proceedings under the provisions of Part II of the Act. Part VII is a completely different matter in which the acquisition cost is met by the Company. An agreement has already been executed between the company and the Government by which the company has agreed to bear the cost of acquisition. Our attention was drawn to the decision of the Government where the respondent-State has contributed Rs. 100/- towards the cost of acquisition. This according to the respondents was sufficient compliance of the Act. According to the petitioners, this was merely lip service and could not be termed as sufficient compliance of the provisions of the Act. As stated above the Act does not provide for any percentage of the total cost to be borne by the State to make it an acquisition under the provisions of Part II of the Act.

33. The matter was settled way back in 1971 when the Supreme Court observed in *Jage Ram and Others Vs. State of Haryana and Others*, that even if a government contributed Rs. 100/- towards the cost of the land then it was not necessary for the Government to proceed with the acquisition under Part VII of the Act.

34. The settled proposition of law is that the provisions of Section 6 are subject to Part VII of the Act. There is an apparent distinction between the acquisition for a public purpose and acquisition for a company. If the compensation is to flow from the public revenue or some fund controlled or managed by the local authority then the declaration of the purpose is essential a public purpose. But in so far as Part VII is concerned, even if there is a public purpose behind the acquisition the same cannot be deemed to be an acquisition for public purpose unless at least part of the compensation is payable out to the public revenue. But the ratio in which the public revenue is to be contributed has not been specified.

35. We are inclined to follow the ratio of the judgments in *Jage Ram's* case (supra) and *Pratibha Nema v* case (supra). A perusal of the record shows that the State has paid Rs. 100/- and the rest of the cost is to be borne by the company. An agreement has been chalked out between the Government and the Company. We have no hesitation to accept that the State's contribution makes the present acquisition an "acquisition for a public purpose". This acquisition has been done in furtherance of provisions of Part II of the Act and, therefore, the provisions of Part VII would not be attracted.

36. It was then contended that the agreement between the Government and respondents No. 5 had come into existence on the same date when notification u/s 6 was issued i.e. on 27.2.2003 and this was non-compliance of Section 41. We cannot persuade ourselves to agree to this submission of the learned Counsel for the petitioners. A perusal of the record shows that it was only after the report of the Collector made u/s 5-A of the Act that the agreement was executed with the answering respondent and simultaneously a declaration u/s 6 was also issued. Therefore, the provisions of the Act stood complied with in letter and spirit. The petitioners could not make a grievance out of this as they had to show some prejudice or violation of their fundamental right. The land which is sought to be acquired is adjacent to the existing structure owned by the company where their unit already exists.

37. It cannot, therefore, be said that the action of the Government was a result of colourable exercise of power. It was logical and prudent to acquire the adjoining area for expansion. Moreover, the purpose of acquisition was for the benefit of public at large.

38. It was further contended by the learned Counsel for the petitioners that the company was a private company and, therefore, the land could be acquired for it only, for the purpose, as mentioned in Section 40(a). The contention is misconceived as respondent No. 5 is a public limited company and this fact has not been controverted by any of the parties.

39. The Explanation u/s 44-B further says that private company and a Government company shall have the meaning assigned to them in the Companies Act. Respondent No. 5 is a public limited company and is not a private company as referred to u/s 44-B of the Act. The limitations as contained in Section 44-B, therefore, would not be attracted. The acquisition for such companies can be resorted to for any of the purpose mentioned in Section 40(1). The only condition is whenever the Government resorts to the provisions of Part VII and seeks to acquire land for the said company then it has to satisfy itself regarding the purpose of acquisition, and then conform itself to the procedure and limitations of Part VII. Otherwise when land is acquired for a public purpose and cost of acquisition is met by the State, however minimal, then the acquisition shall be under Part II and provisions of Part VII need not be complied with.

40. The totality of the circumstances shows that the acquisition has been made by the State for the company in pursuance to the provisions of Part II of the Act. The land was adjacent to the land where the company is already carrying on its activities. The public purpose was well defined and the provisions of Section 5-A stood duly complied with. The petitioners had filed relevant objections which were considered and rejected after proper application of mind.

41. Mr. G.S. Grewal, learned Senior Advocate appearing with Ms. Tanishna Peshwaria, Advocate (in C.W.P. No. 8246 of 2004) made an additional submission that before resorting to the acquisition the Land Acquisition (Companies) Rules, 1963 had not been complied with. Rule 4 of the said Rules contemplates an enquiry where the landowner is entitled to be given an opportunity of hearing and in non-compliance of these Rules vitiates the acquisition and in support thereof he cited. *State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others*, .

42. This matter has recently been concluded by the Apex Court in *Fomento Resorts and Hotels Ltd. Vs. Gustavo Ranato Da Cruz Pinto and Others*, and it has been held that Rule 4(1) is not mandatory. It is desirable that in appropriate case an enquiry under Rule 4(1) may be held for the issuance of notification u/s 4 but it is not a mandatory requirement which must proceed before the issuance of notification u/s 4. These steps maybe necessary for the issuance of notification u/s 4 but for all practical purposes the acquisition proceedings actually began after notification u/s 6. The satisfaction of the government is, therefore, necessary at the time of issuance of notification u/s 6.

43. Once this rule is held to be directory then what is to be seen is that there should be a fair enquiry before the issuance of notification u/s 6. In the instant case the objections filed by the petitioners were detailed objections which were duly considered and, therefore, it cannot be said that any right of the petitioners has been infringed or they have been prejudiced in any manner.

44. We, therefore, conclude by saying that the action of the respondents does not smack of colourable exercise of power. The petitioners have not been prejudiced in any manner and there has been substantial compliance of the provisions of the Act. The acquisition is not for a company simpliciter and the provisions of Part VII of the Act are not attracted while Part II stands substantially complied with.

45. In the result the petitions do not deserve to succeed and the same are accordingly dismissed with no order as to costs,