
(1972) 08 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No"s. 2726 and 2727 of 1969

Gurbax Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-08-1972

Acts Referred:

Constitution of India, 1950 — Article 31(2)

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 3(1)

Citation : AIR 1973 P&H 310

Hon'ble Judges : Ranjit Singh Sarkaria, J

Bench : Single Bench

Judgement

1. This judgment will dispose of two Civil Writ Petitions Nos. 2726 of 1969 and 2727 of 1969.

2. The writ petitioners are residents of village Budha Theh and Warriach, Tahsil and District Amritsar. On 19-9-1968 a notice under S. 3(1) of the Requisitioning and Acquisition of Immovable Property Act No. XXX of 1952 (hereinafter called the Act) was issued to the individual petitioners and other right holders of land by the District Magistrate (Competent Authority) to show cause within 15 days of service of that notice why the land detailed therein be not requisitioned. Instead of sending individual objection in response to these notices, the petitioners and a large number of other land holders of village Budeh Theh and Warriach sent a joint representation on 3-10-1968 to the Defence Minister, objecting to the requisition of this land and praying for its release. Copy of that representation was sent to the Deputy Commissioner (respondent No. 3) on 9-10-1968. The Officer-in-charge of the office made this endorsement on the copy of that letter. "Put up on receipt of other objections."

3. In this writ petition under article 226 of the Constitution, the petitioners challenged the requisition of their land under the aforesaid Act, mainly on two grounds--

(i) that the provisions of clause (b) of sub-section (3) of Section 8 of the Act

offends Article 31(2) of the Constitution and is therefore, ultra vires, null and void.

(ii) that the petitioners were never given an opportunity of being heard in support of the objections which, according to them, were filed in time in response to the notices issued u/s 3(1) of the Act.

4. Regarding objection No. 1. Mr. Jawand Singh, Advocate has placed reliance on Kamalabai Harjivandas Pareka Vs. T.B. Desaid and Another, . This ruling was, however, affirmed by the Supreme Court, and the decision is reported as Union of India (UOI) Vs. Kamlabhai Harjiwandas Parekh and Others, . The relevant part of Head Note (A) reads as under:--

"Sub-Section (3) of Section 8 of Requisitioning and Acquisition of Immovable Property Act, 1952 leads no choice to the arbitrator as to which of the two modes of assessing the compensation he is to accept. The words sub-section (3) are mandatory and compile the arbitrator to accept only the smaller figure arrived at after assessment on the two modes of valuation."

"The expression "have regard to" in sub-clause (e) of sub-section (1) of Section 8 does not give the arbitrator any freedom of considering the two modes laid down in sub-section (3) and accepting the one which he thought fair."

"Clause (a) of section 8(3) lays down a principle aimed at giving the owner of the land something which approximates its just equivalent on the date of acquisition. Clause (b) however directs the arbitrator to measure the price arrived at in terms of Clause(a) with twice the amount of money which the requisitioned property would have fetched if it had been sold on the date of requisition and to ignore the excess of the price computed in terms of Clause (a) over that in terms of Clause (b). The basis provided by Clause (b) has nothing to do with just equivalent of the land on the date of acquisition nor is there any principle for such a basis. Therefore Clause (3)(b) cannot be said to satisfy requirements of Article 31(2) of the Constitution."

In view of this Supreme Court ruling Clause (b) of sub-section (3) of Section 8 of the Act must be treated as non est. However, clause (a) of that sub-section is good law and there is nothing to prevent the arbitrator to assess compensation in accordance with that clause. In the instant case, compensation has not yet been assessed. Even possession has not been taken over. The objection is, therefore, merely hypothetical. There is no reason to suppose that the arbitrator would act under clause (b) of Section (3) of Section 8 which was struck down by the Supreme Court.

5. Coming to objection (ii) it may be noted that no objections by the individual land holders to whom notices u/s 3(1) were issued, were submitted. The petitioners along with other land owners of the villages sent a representation to the Defence Minister. Even in the endorsement, by which the copy of this letter signed by the same land-owners, was sent to the Deputy Commissioner,(District

Magistrate), no request was made that these objections be considered by the competent authority. In short no objections in accordance with law were ever preferred by the petitioners in response to the individual notices served on them u/s 3(1) of the Act.

6. No other point has been argued before me in this petition, which fails and is dismissed. In the circumstances of the case. I would leave the parties to bear their own costs.

7. Petition dismissed.