

(2006) 07 P&H CK 0088
In the Punjab And Haryana At Chandigarh

Gurcharan Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-07-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 4, 5A, 6

Citation : (2007) 145 PLR 261

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

Bench : Division Bench

Judgement

Mahesh Grover, J.—The petitioners have challenged the action of the State Government in issuing notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") seeking to acquire their lands by invoking the urgency provisions contained in Section 17(2)(c) of the Act.

The case of the petitioners as set out in the petition is that they are the owners in possession of the land situated in village Kurali, Tehsil Kharar, District Ropar. The petitioners have raised construction on the area in question and some business activities are also going on in that area. The land is being acquired for the purpose of setting up New Mandi Township. In the year 1988, the area was selected for the said purpose but was not given effect to as the land of some Municipal Councillor fell in that area. Second time the land was selected but the acquisition was not carried out because of the involvement of the land of one Lakhbir Singh, nephew of Ex-MLA Raja Singh, who is stated to be the President of Municipal Committee, Kurali at present. The third time the

area was selected and a notification was issued on 1.7.2002 but again at the instance of certain influential persons the notification was allowed to lapse. Now on 28.10.2003, the State Government has issued two notifications under Sections 4 and 6 of the Act and has invoked the urgency provisions contained in Section 17(2)(c) of the Act. The petitioners have sought to impugn these notifications primarily on the following four grounds:

i) That there has been no proper publication as is the requirement under the provisions of Section 4 of the Act.

ii) The acquisition is a result of mala fide action on the part of the State, iii) The invoking of urgency provisions is not bona fide as there was no such acute urgency to warrant the invoking of urgency provisions.

iv) The Government has not applied its mind before dispensing with the requirement of filing objections u/s 5-A of the Act.

2. The State Government and the Punjab Mandi Board have supported the process of acquisition to say that the acquisition and the invoking of urgency provisions were in accordance with the provisions of the Act and there was no infirmity in the action of the respondents in resorting to the acquisition. It was further submitted that the ground of mala fide was unsustainable as the acquisition is essential.

3. The primary contention raised by the learned Counsel for the petitioners was that thrice on an earlier occasion the land was sought to be acquired for the purpose of setting up New Mandi Township but the acquisition was not carried out for the reason that the lands of influential persons were involved and now suddenly the Government has issued a notification on 28.10.2003 seeking to acquire the lands of the petitioners by invoking the urgency provisions, whereas no such urgency existed. Since the matter had been repeatedly raked up, therefore, there was no such urgency which would warrant the invocation of the urgency provisions thereby denying the petitioners' right to file objections u/s 5-A which is akin to a fundamental right. The petitioners also submitted that there was no publication of the notification u/s 4 and this violated the mandatory provisions of Section 4 of the Act. It was also contended in support of this argument that the notifications under Sections 4 and 6 were issued on 28.10.2003, on the same day which is violative of the provisions of Section 17(4) of the Act. It was then contended that apart from this even if it is assumed that urgency existed even then the Government had failed to establish and record its satisfaction which was essential before dispensing with the inquiry u/s 5-A of the Act. There is thus no application of mind by the State before dispensing with the inquiry u/s 5-A of the Act.

4. Learned counsel for the petitioners placed reliance on the judgment of the Supreme Court in Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others, where their Lordships observed as follows:

The mere fact that the applicability of the provisions of Section 5-A have been dispensed with u/s 17(4) of the Act at the time the notification u/s 4(1) was issued does not authorise the dispensing with the provisions of Section 4(1). The provisions of Section 4(1) cannot be held to be mandatory in one situation and directory in another. Section 4(1) does not contemplate any distinction between those proceedings in which in exercise of the power u/s 17(4) the appropriate government directs that the provisions of Section 5-A shall not apply and where

such a direction has not been made dispensing with the applicability of Section 5-A. Spl. Appeals Nos.329 and 323 of 1963, D/-8-10-1963 (All.), Reversed.

5. There is absolutely no doubt that the provisions of Section 4 cannot be dispensed with and the requirements have to be complied with.

6. In view of the contentions raised by the learned Counsel for the petitioners we deemed it appropriate to summon the records of the case to satisfy ourselves regarding the fulfilment of the procedural requirements before resorting to the urgency provisions and then answer these questions regarding the compliance of the provisions of the Act on the basis of the record. A perusal of the record which has been produced before us in Court shows that the notification u/s 4 of the Act was duly published on 2.11.2003 in the newspaper Jagbani (Jalandhar Edition) and on 3.11.2002 in the daily Indian Express. The Munadi itself was conducted on 30.10.2003. It is noteworthy to mention here that the notification was published in the official gazette on 28.10.2003. Section 4 of the Act mandates that a notification indicating the intent of the Government to acquire certain lands shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. Since the notification was published in two newspapers, one in Vernacular and the other in the English newspaper and the Munadi was also done, there was sufficient compliance of the provisions of Section 4 of the Act. Similarly, the notification u/s 6 of the Act was published in Jagbani (Jalandhar Edition) on 5.11.2003 and in the Indian Express on 6.11.2003. To our minds there is no infirmity in so far as the question of publication is concerned.

7. The contention of the petitioners that there has been violation of the provisions of Section 17(4), inasmuch as the notifications under Sections 4 and 6 were issued on the same date is also not correct.

8. As detailed above, the notification u/s 4 was published on 2.11.2003 and 3.11.2003 and the notification u/s 6 was issued on 5.11.2003 and 6.11.2003. The notification u/s 6 of the Act was published after the publication of the notification u/s 4. The contention of the petitioners that they were done simultaneously is, therefore, misplaced and not borne out from the records.

9. It was then contended by the learned Counsel for the petitioners that according to Section 17(4) of the Act the State Government had to formulate an opinion before it came to the conclusion that the provisions of Section 5-A of the Act shall not apply. Section 17(4) reads as under:

17. Special powers in cases of urgency.-

(1)....(4)

In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (2) are applicable, the

appropriate Government may direct that the provisions of Section 5A shall not apply, and, if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after the date of the publication of the notification u/s 4, Sub-section (1)

10. Reliance was placed on the judgment of the apex court reported as Union of India (UOI) and Others Vs. Mukesh Hans etc., wherein the observations made by their Lordships are as follows:

24. A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4) that by itself is not sufficient to direct the dispensation of 5A inquiry. It requires an opinion to be formed by the concerned government that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with 5A inquiry which indicates that the Legislature intended that the appropriate government to apply its mind before dispensing with 5A inquiry. It also indicates the mere existence of an urgency u/s 17(1) or unforeseen emergency u/s 17(2) would not by themselves be sufficient for dispensing with 5-A inquiry. If that was not the intention of the Legislature then the latter part of Sub-section (4) of Section 17 would not have been necessary and the Legislature in Section 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen urgency automatically 5-A inquiry will be dispensed with. But then that is not language of the section which in our opinion requires the appropriate government to further consider the need for dispensing with 5A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with 5-A inquiry does not mean that in and every case when there is an urgency contemplated u/s 17(1) and unforeseen emergency contemplated u/s 17(2) exists that by itself would not contain the need for dispensing with 5A inquiry. It is possible in a given case the urgency noticed by the appropriate Government u/s 17(1) or the unforeseen emergency u/s 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry u/s 5-A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the 5-A inquiry is inherent in the two types of urgencies contemplated u/s 17(1) and (2) of the Act.

11. Similarly in the case of Union of India v. Shakuntala Gupta (dead) by LRs(2002) 132 P.L.R. 836 it was held that "Mere opinion of Governor that the provisions of Section 17(1) of the Act were applicable without being supported by any cogent reasons is not sufficient to attract the urgency provisions.

12. Mr. Munjal, learned Senior Additional Advocate General, Punjab drew our attention to a decision dated 14.10.2003 which is on record as Annexure R-I (to the unamended petition) in which a reference has been made to a decision which was taken on 13.10.2003 and the urgency for establishing a new grain market

was discussed thread-bare. The relevant extract of this letter dated 14.10.2003 is as follows:

...(It is being brought to your kind notice regarding the establishment of New Grain Market, that the Grain Market of Kurali is very old. In this, approximately 5 lakhs quintals of grain arrives. Due to the existence of this Mandi in the middle of the city, there is insufficient land, and due to the usual closing of adjoining Fatak of Railway, the traffic haphazard comes to the way and the farmers facing great problems to bring their grains. At present about 10 Acres land in order to run the Mandi has been taken on lease every year from the farmerRs. In this way, approximately one lakh rupees payment is being spent in every year to the owners concerned. Due to "Kachchi Space" of the Grain Market, at the time of raining, it causes great losses to the grains of the farmerRs. Besides this, who are the owners of this land, they have been refusing to let out the same on lease even from the last year. In case, the above said land is not given on lease by the above said owners before the next crops, then the Kurali Grain Market will be closed and due to the problems facing by the Commission Agents and Farmers, the position of law and order may be disturbed. The land which at present approved is situated out of the City and adjoining to the main road). Many of the Commission Agents and residents of the area are agreed to establish the New Grain market on this site. It is also agreed by the legislator of the area S. Jagmohan Singh Kang, Minister of Animal Husbandry, Fish Farming, Sports and Youth Services, Punjab.

In view of the above, it is requested that the recommendation be sent to Director Colonization, Punjab for the acquirement of land for establishment of New Grain Market, u/s 17(1) of the Land Acquisition Act because acquisition work for this Grain Market is to be done by Director Colonization, Punjab.

Sd/- Sub Divisional Magistrate, Kharar.

13. A perusal of the above shows that the Government was seized of the problem wherein they were confronted with inevitable collapse of the handling of grains in the absence of any proper grain market. The decision was taken on 13.10.2003 and two communications were sent i.e. on 14.10.2003 and 15.10.2003 (Annexures R. 1 and R.2) and the notification was issued on 28.10.2003. It cannot, therefore, be said that there was non-application of mind before the notifications to acquire the land were invoked. The State was alive to a situation and the decision had been taken after due deliberations where the legislator of the local area, the agricultural minister and various officials who are involved in the decision making process were associated.

14. The apex court in Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, held as under:

"Urgency" for invoking of Section 17 of the Act should be one arising naturally out of circumstances, which exist when the decision to acquire the land is taken and not such, which is the result of serious lapse or gross delay on the part of

the acquiring authority. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State administration. Failure to take timely action for acquisition by the authorities of the Union of India cannot be a ground to invoke the urgency clause to the serious detriment of the right of the landowner to raise objections to the acquisition u/s 5-A. However, the position may be different where the delay is caused or occasioned by the landowner himself.

15. Similarly in Union of India (UOI) and Others Vs. Mukesh Hans etc., the apex court observed as under:

Section 17(4) which is an exception to the normal mode of acquisition contemplated under the Act shows that existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation with Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry. If that was not the intention of the legislature then the latter part of Section 17(4) would not have been necessary and the legislature in Sections 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency Section 5-A inquiry will be dispensed with automatically. But then that is not the language of the section. Although it is possible in a given case that the urgency u/s 17(1) or the unforeseen emergency u/s 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry u/s 5-A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation with the Section 5-A inquiry is inherent in the two types of urgencies contemplated under Sections 17(1) and (2) of the Act.

16. We are now confronted with the situation where we have to test the contention so as to see whether such an urgency existed which would warrant depriving the landowners of their right to file objections u/s 5-A. The facts of the case show that the Government had thrice on earlier occasion decided to resort to acquisition for the same purpose but had not for one reason or the other carried the acquisition to its logical end. The reasoning as is reflected in the communications Annexures R. 1 and R.2 (reproduced in the foregoing

paragraphs) show that part of the problem, which the administration is now confronted with, is of their own making. It was the State which has dilly dallied on the question of setting up this grain market. The State and the administration were squarely responsible for letting things come to such a pass in which an imminent collapse became a writing on the wall.

17. Pressing need in a given situation is distinct from the urgency situation as is contemplated under the Act. In every acquisition there is a need or a pressing need to acquire land but to invoke the urgency provisions. It has to satisfy tests where ordinary procedures are to be dispensed with and urgent measures become absolutely necessary. State cannot be permitted to first create a situation of collapse by its inaction and then resort to emergency provisions. Such measures then assume a draconian hue.

18. The State cannot invoke the urgency provisions and deprive the landowners of their right to file objections u/s 5-A because of the situation as result which is a consequent of their own fallacious action or simply inaction.

19. To our minds, therefore, even though the situation existed where setting up of a grain market was a pressing need yet the State could not be permitted to acquire the land by invoking the urgency provisions because the urgency has arisen as a result of their own inaction. The matter had been in limbo for a long time and thirty days period which is required for inviting the objections and hearing them would not have created much of a difference. The State can otherwise show alacrity and promptness in acquiring lands without resorting to emergency provisions.

20. Section 5-A of the Act is a very valuable right which has been given to a landowner and has been held to be akin to a fundamental right. Depriving a person of his fundamental right for the lapse of the State would only perpetuate the injustice on the landowners.

21. The last contention raised by the learned Counsel for the petitioners was that the acquisition is a result of mala fide. We do not deem it appropriate to go into the question of mala fide because the petitioners have not impleaded the persons against whom mala fides have been alleged as party respondents in the present petition.

22. In view of the facts and circumstances of the case, we, therefore, feel that the invoking of urgency provisions u/s 17(1) was not warranted in the facts and circumstances of the case and, therefore, quash the notifications u/s 6 of the Act. We, are, however, satisfied that the need to acquire the land exists and, therefore, are not inclined to quash the notification u/s 4. We, however, hold that there is no occasion for the State to invoke the urgency clause while issuing notification u/s 4 of the Act. The State shall be at liberty to call for the objections and after hearing them and following proper procedure as is held in the Act may proceed to acquire the land for the said purpose.