

(1981) 01 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 529, 560 and 792 of 1980

Gurcharan Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 01-01-1981

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 4
Constitution of India, 1950 — Article 226
Delhi Development Act, 1957 — Section 15
Land Acquisition Act, 1894 — Section 4, 5, 6

Citation : AIR 1981 P&H 96 : (1981) 1 ILR (P&H) 489

Hon'ble Judges : Harbans Lal, J

Bench : Single Bench

Judgement

1. This judgment with dispose of C.W. P Nos 529, 560 and 792 of 1980 under Article 226 of the Constitution as the same notification u/s 4 and 6 of the Land Acquisition Act (hereinafter to be called the Act) are sought to be quashed by issuance of writ of certiorari. For facility of reference, facts as adverted to in C. W. P. No. 529 of 1980 may be briefly narrated.

A notification u/s 4 of the Act dated 6th January 1978(P-1) was published in the Punjab Government Gazette on 20th January, 1978, by which land situated in villages Udhekaran, Chak Bir Sarkar and Muktsar were to be acquired for a public purpose namely for construction of a bypass at Muktar in Faridkot District. According to the same, objections in writing could be filed by the interested persons within 30 days before the Land Acquisition Collector. This was followed by another notification u/s 6 of the Act (P-2) which was published on 26th October, 1979. The legality of these two notifications has been challenged in his writ petition on behalf of six petitioner whose lands are also included therein.

2. According to the averments in the petition and the contention of the learned counsel for the petitioner, substance of the notification u/s 4 of the Act was not published in the locality concerned nor was the copy of the notification pasted

anywhere as required u/s 4 of the Act. The petitioners came to know from the patwari of Halqa Bhullar that a report about the proclamation relating to the notification had been recorded in his Roznamcha on February 2, 1978. The copy of the same in English translation is P-3 annexed with the petition. In the said report substance of the notification as alleged to be proclaimed is not disclosed. It is the case of the petitioners that even according to the report in the Roznamcha (P-3) substance of the notification was published in the locality after 13 days and as such in view of a Full Bench decision of this Court in *Rattan Singh v. State of Punjab* 1976 PLJ 356: AIR 1976 Punj 279 the impugned notification u/s 4 (p-1) is liable to be quashed as it was mandatory on the authorities concerned to publish the substance of the notification in the locality concerned simultaneously with the publication of the same in the gazette or at least immediately thereafter and the delay in doing the needful was required to be explained satisfactorily. It was also urged by the learned counsel or the petitioner that in *Murari Lal Bhargave V. State of Haryana* 1977 P LJ 398, a Division Bench of this Court quashed a notification u/s 4 of the Act even when there was delay of only six days in the publication of its substance which had not been explained.

3. According to the learned State counsel this delay of 13 days in publication of the substance has been satisfactorily explained in the additional affidavit filed by the Executive Engineer on behalf of respondents Nos. 1 and 2. However the explanation given therein is to the effect that after publication of the notification in the Government gazette on 20th January, 1978, the same was received in the office of the Land Acquisition Collector respondent No. 2 after four days i. e., 24th January 1978. Another three days were spent in preparing typed copies of the notification and a notice u/s 5A which were sent of the Naib Tahsildar Land Acquisition, Amritsar, on 27th January, 1978. Even thereafter, according to the report in the Roznamcha of the patwari, the proclamation was got done in the village by beat of drum through a Chowkidar on 2nd February, 1978. The report in the Roznamcha does not make mention of the details of land which had been acquired. The reference is only to the notification dated 20th January 1978. Nor does it disclose if the copy of the notification or its substance had been pasted on any building in the locality concerned.

4. In *Sat Sec v. State of Punjab* 1975 RLR 622(Punj), the report of the patwari did not make it clear as to what had been proclaimed by the Chowkidar nor was it disclosed as to on which Patwarkhana the published notice had been pasted. The notification pertained to land in several villages but it was not clear as to whether notices had been paste in the Patwarkhana of one village. In these circumstances it was held by R. N. Mittal J. that the substance of the notification had not been published in the locality concerned in accordance with the mandatory provisions of Section 4 of the Act and the notification u/s 4 was consequently quashed.

5. In *Pritam Singh v. State of Punjab* 1976 LJ 2, it was not clear from the report

of the Patwari as to place or the area where the proclamation by bear of drum had been made. Consequently, the notification u/s 4 and 6 of the Act were quashed by the Division Bench.

6. In the present case, it is evident from the impugned notification u/s 4 (p-1) that the land had been acquired in three villages. However, the report Roznamcha (p-3) is absolutely silent about two out of the three villages and the area where the proclamation by beat of drum had been made. In the very nature of things, it cannot be expected that the proclamation will be made in all the three villages by the same Chowkidar. The report also does not make any mention of the time when the proclamation had been made. Details of the land are absolutely missing there in. It is also not disclosed if copy of the substance of the notification had been pasted in the patwarkhana of any of the villages concerned. Thus, this report is quite vague and it is not possible to come to the conclusion. If any proclamation whatsoever was made. It has been held time and again that the publication of the substances of the notification in the locality concerned and also at other places is not a mere formality. Compliance of the same is mandatory as it is intended to give notice to the landowners to file objection against the proposed acquisition. Besides, it is also not possible to appreciate as to why it took four days to prepare the typed copies of the notification and there after another three days had to be spent before the copies could reach the Naib Tehsildar Land Acquisition. Even thereafter, it appears the authorities did not take the matter seriously and proclamation, what-ever its worth, was made only five days after that. This cannot be in any circumstances held to be a satisfactory explanation. The view of the same it must be held that the substance of the notification u/s 4 of the Act was published after an unexplained delay of 13 days and besides the proclamation was also not made in a satisfactory and proper manner as was required.

7. Faced with this situation, the learned State counsel had contended that Gurcharan Singh petitioner No. 1 had filed the written object in u/s 5A of the Act before the collector. Petitioner No. 2 Amt Baljit Kaur was his mother and Paramiji Singh petitioner No. 3 was his nephew. Consequently, these three petitioners cannot take advantage of any infirmity arising from the non-publication of the substance of the notification, according to the law laid down by the Full Bench of this court in Rattan Singh's Case AIR 1976 Punj 279(supra). Reliance in support of this proposition was made on a decision of this Court in Letters Patent appeal No. 73 of 1976(Bishna v. State of Punjab) decided on 29th February 1980.* Undoubtedly, it has been held in this judgment that incase objections u/s 5A of the Act are filed by a landowner, it is not open to him to challenge the validity of the notification u/s 4 on the ground of non-compliance of the provision relating to publication of substance of the notification simultaneously or immediately thereafter. According to the learned counsel for the petitioner this decision does not lay down correct law. Besides, it was also contended that this decision cannot operate against any of the petitioner other than Gurcharan Singh petitioner No. 1. It was emphasized that petitioner No. 2 Smt Baljit kaur was not his mother

but was his brothers wife and the petitioner No. 3 was his nephew. It objection u/s 5A of the Act had been filed by Gurcharan Singh Petitioner No. 1 alone, the same cannot be treated to be the objection by any other petitioner. As Such, their cases cannot be prejudiced on that account alone. I do not agree that the said decision does not lay down correct law, Besides, I am bound by the same while sitting singly. However, the contention of the learned counsel for the petitioner is not without merit that the legal consequences flowing from the act of petitioner No. 1 in filing objection u/s 5A of the Act cannot prejudice the case of the other petitioners. The mere fact that any other petitioner was related to petitioner No. 1 is of no consequence. Each of the Petitioners is a landowners in his or her own right and it entitled to challenge the legality of the impugned notification of his or her own.

8. It was also urged by the learned counsel for the petitioner that so far as Gurcharan Singh petitioner No. 1 was concerned, his case cannot be thrown out on the mere ground that he had filed objection u/s 5A of the Act. It was argued that under Sec 5A, petitioner No. 1 was entitled to be provided an opportunity of hearing by the Collector before the latter could make his recommendation to the Government. In the absence of such an opportunity, the impugned notification have to be quashed. In support of this proposition. reliance was placed on two supreme Court decisions as reported in Shri Mandir Sita Ramji Vs. Lt. Governor of Delhi and Others, and Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another, . A close perusal of these decision leaves no manner of doubt that it is mandatory for the Collector to serve notice on the landowner who files written objection u/s 5A and to provide him opportunity of hearing and non-compliance with this essential requirement vitiates the subsequent proceedings. In the present case, the learned State Counsel was not able to show from the record if Gurcharan Singh petitioner No. 1 who had filed the objection was served with a notice u/s 5A of the Act or if any opportunity of hearing was provided to him.

9. It was then urged by the learned State Counsel that in the present case Land Acquisition Collector had announced the award and amount of compensation so determined was also received by the petitioner. Even proceedings were also initiated on behalf of the petitioner u/s 18 of the Act for enhancement of the amount of compensation. In view of the same it was argued that the writ petition was not maintainable. It was admitted that the award was made by the Collector on 6th March, 1980. and reference u/s 18 of the At was filed by all the petitioner on 9th April. 1980, whereas the writ petition was filed on 18th February, 1980. Thus, it cannot be disputed that the writ petition have been filed before the announcement of the award or the making of the reference u/s 18 of the Act. It is also not denied that the land of the petitioners fell in two villages and possession of the land only in village Muktsar have been taken by the authorities on 13th March, 1980. Thus, even possession was take from the petitioners partly after the filing of the petition. In this view of the matter, reliance on decision in which it was held that the writ petition was not maintainable in case

compensation had been received and reference made u/s 18 of the Act is misconceived and it is not necessary to advert to them in any details.

10. Lastly, it was emphasized by the learned State Counsel that the writ petition was not maintainable as the same was filed after long delay. It was pointed out that the notification u/s 4 of the Act (p-1) was published on 20th January, 1978, whereas the writ petition was filed on 18th February, 1980. According to the State Counsel a delay for more than two years disentitled the petitioner from filing the petition. As against this, it was urged by learned counsel for the petitioners that though the first notification u/s 4 of the Act was published on 20th January, 1978, but the Government did not think it fit to take steps of publishing the notification u/s 6 of the Act till 6th October, 1979. Even thereafter, no steps whatsoever were taken in pursuing the matter as award was pronounced as late as 6th March, 1980 and no proceedings were taken for taking possession before the 13th March, 1980. A number of decisions have been relied upon on both sides in support of their respective contentions which may be briefly considered.

11. In Union of India (UOI) Vs. Khas Karanapura Colliery Ltd., , a notification u/s 4 of Coal Bearing Areas (Acquisition and Development) Act, 1957, was challenged within six months of the notification. It was held that this delay was not sufficient to refuse a relief to the petitioner under Article 226 of the Constitution of India.

12. In Rajinder Parshad v. Punjab State, AIR 1966 Punj 185, Full Bench of this court elaborately

considered the question of delay, while considering a petition under Article 226 of the constitution. It was held as under:--

"No hard and fast rule can be laid down in this respect. So it would not be correct to say that merely looking at the question of some delay, the petition must be dismissed off-hand, nor would it be correct to say, as an abstract proposition, that, ignoring delay, the petitioner can insist upon the decision of the case on merits. Such inflexible rule cannot be laid down and when, considering a petition under Art. 226, what the court does is that it takes into consideration the facts and circumstances of the case and delay is one of such circumstances in exercising its judicial discretion for ends of justice in the matter of decision of the petition. The supreme consideration for the exercise of the power and jurisdiction under Article 226 is the ends of justice, and that provides the approach to the exercise of judicial discretion in the matter, which embraces consideration of various aspects of the controversy, and no limitation as rigid rules or proposition, such as referred to above, can be a fetter to that."

13. In Aflatoon and Others Vs. Lt. Governor of Delhi and Others, , notification u/s 4 of the Act was issued in 1959 and that u/s 6 in 1966. The writ petition was filed in 1970 in which the notification had been challenged on the ground that the particulars of public purposes had not been specified and that the Chief

Commissioner was not competent to issue notification in view of Section 15 of the Delhi Development Act. The writ petition was dismissed on ground of delay. It was held by the Supreme Court that the writ petitioners were guilty of dilatory tactics as they sat on the fence and allowed the Government to complete acquisition proceedings on the basis that the notification were void. In *Indrapuri Griha Nirman Sahakari Samiti Ltd. Vs. The State of Rajasthan and Others*, , the writ petition had been filed after 9 years from the date of declaration u/s 6 of the Land Acquisition Act. It was held that the length of delay in view of the nature of acts done during the interval on the basis of the notification was an important circumstances to be taken into consideration.

14. In *Northern Carriers Pvt. Ltd. v. State of Punjab* 1980 R LR 140 : AIR 1980 NOC 35 (Punj & Har), a notification u/s 36 of the Punjab Town Improvement Act, 1922, which amounted to a notification u/s 4 of the Land Acquisition Act was issued in 1966 and the writ petition was filed after the delay of 10 years in 1966. However, in spite of this apparent delay, this writ petition was not dismissed on the ground of laches as the petitioner continued to be in possession of the property in dispute till the filing of the writ petition and it was held that the petitioner had a right to come to the Court to challenge a void notification when his right of possession is likely to be infringed.

15. So far as the present petition is concerned, it is not disputed that in spite of the two notification having been issued, the Collector had not announced the award at the time when the writ petition was filed not was any notice u/s 9 of the Act was issued for the purpose of taking possession of the land under Acquisition. The petitioners continued to be in possession p to the time of the filing of the writ petition. In these circumstances it is not reasonable and in the interest of justice to throw the writ petition on the ground of delay and laches alone.

16. It was also pointed out by the learned State Counsel that the Government amounting to Rs. 14 lacs in connection with the proceedings under the impugned notification and that the Government will be put to a great loss if the same were quashed. This contention on deeper scrutiny has no merit. A close perusal of Annexure R-1 disclosing the details of the expenditure purporting to have been incurred by the Government in connection with the bye-pass for which the land has been acquired makes it evident that out of about Rs. 14 lacs alleged to have been incurred an amount of Rs. 11 lacs pertains to the amount of compensation which has been paid to the landowners. This amount on the face of it cannot be held to be one which will go waste in case the notification are quashed. The landowners will be liable to refund this amount and the Government will be legally entitled to recover the same. Up to the date of filing of the writ petition I on 18th February, 1980, only an amount of Rs. 5600/- had been spent out of which an amount of about Rs. 5,000/- pertains to the collection of bricks. From this no conclusion, as contended by the learned State counsel is warranted that the State has already undergone that the State counsel is warranted that the

State has already undergone huge expenses. Though the notification u/s 4 was published on 20th January, 1978. Government took about one years and nine months to make up its mind finally to make a declaration u/s 6. Even thereafter no worthwhile steps were taken up to the date of the filing of the writ petition which could indicate that the Government was serious in pursuing the matter regarding the construction of bye-pass for which the land was sought to be acquired. In view of all these circumstances, the writ petition cannot be thrown out on the ground of laches or delay or huge expenditure having been incurred by the Government.

17. In Civil Writ, No. 560 of 1980, the writ petition was filed on 20th February whereas the reference u/s 18 of the Act was made by the petitioner on 11th March, 1980, and possession of the land of the petitioners is said to have been taken on 13th March 1980, i. e, subsequent to the filing of the petition. However it is admitted by the learned counsel for the petitioners that out of the three petitioners, petitioner No. 1 Ajmer Singh and petitioner No. 2 Tegbir Singh did file objections u/s 5A of the Act. It is also clear from the record produced by the learned counsel for the state that both these petitioners had been served with notices u/s 5A to appear before the collector in support of their objection. Out of them Ajmer Singh petitioner No. 1 had even put in appearance and even his statement had been recorded. In view of the decision of the L. P. A Bench as referred to in the earlier part of this judgment, the writ petition of both these petitioner has to be dismissed, in spite of the infirmity in the publication of substance of the notification u/s 4 of the Act. However the writ petition of petitioner No. 3 must succeed. According to the learned counsel for the petitioners, Khasra No. 2142 of Rectangle No. 309 of village Muktsar, is not covered by the alignment of bye-pass but the same has also been acquired under the impugned notification. According to the reply filed on behalf of the State, the land bearing this Khasra No. is not required for the purpose for which the impugned notification were issued, it has even been disclosed that the Government has decided to issue the necessary notification denotifying the land comprised in this Khasra No. Consequently, it is also held that land bearing Khasra No. 2142 of Rectangle 309 of Village Muktar will not stand acquired by the impugned notifications.

18. As regards C.W. P No. 792 of 1980, the writ petition was filed on 12th March, 1980, whereas the possession of the land was taken by the State on 13th March, 1980, and the amount of the compensation awarded was also received by the petitioner on 21st March, 1980. Reference u/s 18 of the Act was made by him on 9th May, 1980. It is not disputed that no objection u/s 5A of the Act had been filed by the petitioner. In view of these circumstances this petition also cannot be dismissed on the ground of laches.

19. For the reasons mentioned above, writ petitions No. 529 of 1980 and 792 of 1980 are allowed and the impugned notifications Annexure P-1 and P-2 are quashed qua the petitioner in these writ petition. C. W. P. No. 560 of 1980 is

allowed only qua Rajbir Singh petitioner No. 3. The writ petition of the other two petitioner No. 1 and 2 are dismissed. In view of the peculiar circumstances of the case, there will be no order as to costs.

20. Order accordingly.