

(1995) 04 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4157 of 1994

Gurdev Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 21-04-1995

Acts Referred:

Land Acquisition Act, 1894 — Section 17(4), 5A

Citation : (1995) 111 PLR 77

Hon'ble Judges : S.C. Malte, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : M.L. Sarin and Hemant Sarin, in C.W.P. No. 4157 of 1994 and G.S. Dhillon, in C.W.P. No. 4405 of 1994, for the Appellant; Randhir Singh, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Proceedings undertaken by the Government of Punjab for acquisition of land for Government Polytechnic at village Mansa Kalan, Tehsil and District Mansa, are under challenge in both these petitions and, therefore, these petitions are being decided by a common order.

2. Reference to the facts of Civil Writ Petition No. 4157 of 1994 is sufficient for the purpose of this order. Petitioners are owners of different parcels of land in village Mansa Kalan. Their lands were included in the notification (Annexure P-1) dated 17.3.1994 issued by the Department of Technical Education and Industrial Training, Government of Punjab, u/s 4 read with Section 17 of the Land Acquisition Act, 1894 (for short, the 1894 Act). Their lands also find mention in the notification dated 22.3.1994 (Annexure P-3) issued by the Government of Punjab u/s 17 of 1894 Act. Petitioners have challenged these notifications on the ground that the Government had no material available before it on the basis of which it could form an opinion that acquisition of land was of such an urgent nature that it was not desirable to hold enquiry u/s 5-A of the Act. Their contention is that the decision to set up a Government Polytechnic at Mansa

Kalan was taken in the year 1992 and thereafter the Government waited for almost two years before invoking the urgency provisions warranting exclusion of the enquiry u/s 5-A of the Act. Another ground of challenge is that substance of the notifications (Annexures P-1 and P-3) were not published at convenient places in the locality and, therefore, the impugned acquisition is liable to be declared as illegal.

3. In reply, the respondents have stated that a site-selection committee was constituted on 20.11.92. The committee met on 26.5.1993. This committee considered three sites and ultimately selected the site at Mansa Barnala road adjacent to a Spinning Mill. Thereafter, "no objection certificate" was sought from the Deputy Commissioner, Mansa. The selection committee once again met on 17.1.1994 and selected the site at Mansa-Barnala road opposite the Nehru Memorial College. Thereafter, notification u/s 4 read with Section 17 of 1894 Act was issued on 17.3.1994. It was got published in two newspapers - Nawazamana and the Tribune. A proclamation was also published through the village Chowkidar by beat of drum and the individual land-owners were served with a copy of the notification. At the same time, copies of the notification were displayed on the notice boards outside the offices of the Deputy Commissioner, Mansa, the Sub-Divisional Officer (Civil), Mansa, the Tehsildar, Mansa, and the Patwarkhana, Mansa, and, thus, there was sufficient compliance of the mandatory requirement of law regarding publication.

4. The main point which calls for adjudication is whether the respondent-Government had any material available with it for forming an opinion that it was not necessary to follow the procedure laid down in Section 5-A of the Act. A look at the documents filed by both the parties shows that the Governor of Punjab issued order Annexure R-i dated 20.11.1992 for constitution of a site-selection committee and a negotiation committee for setting up a Government Polytechnic at Mansa Kalan. This committee met on 15.3.1994. In the meeting, the Divisional Town Planner, Bhatinda, objected to the selection of the site in dispute on the ground that the land falls in industrial zone and it was opposite the grain market. It appears that the objection raised by the Divisional Town Planner did not find favour with the majority of the members of the committee. Just after two days of the meeting of the selection committee, the Government issued the impugned notification dated 17.3.1994 for acquisition of the land u/s 4 read with Section 17 of the Land Acquisition Act, 1894. At the same time, the Government dispensed the enquiry u/s 5-A of the Act on the ground that construction of the building was required to be started immediately and, therefore, it was not possible to follow the procedure contained in Section 5-A. It appears from the record that the site-selection committee had considered three sites and at one stage it was opined that the site at Sirsa-Mansa road was not suitable for establishment of a Government Polytechnic. However, later on this view was changed and the committee recommended acquisition of the land in dispute. Perusal of Annexure R-2 shows that the site-selection committee was of the opinion that in the zoning plan, the land was kept for industrial zone and was

likely to be used for industries.

5. Urgency clause contained in Section 17 of 1894 Act has been interpreted by this Court as well as the Supreme Court. In *State of Punjab v. Sudhir Kumar Dhingra* 1978 R L R 530, a Division Bench of this Court upheld the order of the Single Bench and held that setting up of a Mandi Township was not such a public purpose which would necessitate the invoking of the urgency provisions. The Division Bench observed :-

"Before invoking the provisions of Section 17(4) of the Act, it is incumbent on the authority concerned to apply its mind to the question whether there is an urgency of such a nature that even summary proceedings u/s 5-A of the Act should be eliminated. It is not just the existence of an urgency, but the need to dispense with an inquiry u/s 5-A which has to be considered. The filing of objections u/s 5-A is a very valuable right available to the land-owner under the Act after the issuance of a notification u/s 4(1) of the Act. Such a right is required to be taken away under law only in exceptional circumstances which are envisaged u/s 17 of the Act."

6. In *Narayan Govind Gavate v. State of Maharashtra*, AIR 1977 S.C. 183, acquisition of land for development of Industrial areas and residential tenements by invoking the provisions of Section 17 became subject-matter of challenge in the Supreme Court. While upholding the objection that the urgency clause could not have been invoked, their Lordships of the Supreme Court held :-

"Now, the purpose of Section 17(4) of the Act is, obviously, not merely to confine action under it to waste and arable land but also to situation in which an inquiry u/s 5-A will serve no useful purpose, or, for some overriding reason, it should be dispensed with. The mind of the officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings u/s 5-A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry u/s 5-A which has to be considered.

Section 17(2) deals with a case in which an inquiry u/s 5-A of the Act could not possibly serve any purpose. Sudden change of the course of a river would leave no option if essential communications have to be maintained. It results in more or less indicating by an operation of natural physical forces beyond human control, what land should be urgently taken possession of. Hence it offers no difficulty in applying Section 17(4) in public interest. And, the particulars of what is obviously to be done in public interest need not be concealed when its validity is questioned in a Court of justice. Other cases may raise questions involving consideration of facts which are especially within the knowledge of the authorities concerned. And, if they do not discharge their special burden, imposed by Section 106, Evidence Act, without even disclosing a sufficient reason for their abstention from disclosure, they have to take the consequences which flow from the non-production of the best evidence which could be

produced on behalf of the State if its stand was correct.

In the case before us, the public purpose indicated is the development of an area for industrial and residential purposes. This, in itself, on the face of it, does not call for any such action, barring exceptional circumstances, as to make immediate possession without holding even a summary enquiry u/s 5-A of the Act, imperative. On the other hand, such schemes generally take sufficient period of time to enable atleast summary enquiries u/s 5-A of the Act to be completed without any impediment, whatsoever to the execution of the schemes. Therefore, the very statement of the public purpose for which the land was to be acquired indicated the absence of such urgency, on the apparent facts of the case, as to require the elimination of an enquiry u/s 5-A of the Act."

7. In *State of Punjab and Another Vs. Gurdial Singh and Others*, , the Supreme Court upheld a judgment of this Court and held that establishment of a grain market was not such a matter in which the urgency clause could be invoked. Their Lordships noted the grave consequences of acquisition of land of an individual and observed :-

"It is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 (and 19) burke an enquiry u/s 17 of the Act."

8. Similarly, in *Mangat Singh v. State of Punjab*, 1992 PLJ 129, a Division Bench of this Court held that acquisition of land for setting up a sugar mill was not a matter in which the Government could legitimately dispense with the enquiry envisaged by Section 5-A of the Act.

9. An examination of the facts of this case in the light of the principles of law enunciated by the Supreme Court and by this Court leads to the conclusion that the Government has invoked the provisions of Section 17(2) (c) for acquisition of land without there being a real urgency. No material has been placed by the respondents on the record of the case to show that the need of setting up of a Government Polytechnic at Mansa Kalan was of such that it could not brook delay for few months. The respondents have not filed any affidavit of a competent officers to show that they had applied mind on the issue whether the urgency was of such a nature that the enquiry envisaged by Section 5-A should be dispensed with. A mere statement in the notification or in the reply to the writ petition that the construction of the building is to be started immediately so as to meet the time bound construction schedule is not sufficient to answer the challenge that the acquisition was not of such a nature that even a summary enquiry u/s 5-A of the Act should be dispensed with. Neither Annexure R-1 nor Annexure R-2 gives any indication of such urgency. Therefore, mere issue of

notification by invoking the provisions of Section 17(4) of the Act is not sufficient to prove that the enquiry u/s 5-A was not warranted.

10. Moreover, the respondents have not placed before the Court any material to show as to when the Government had examined the need of establishing a Polytechnic at Mansa Kalan. What was the urgency needed for construction of the building and how would "the proceedings have suffered by holding of an enquiry u/s 5-A of 1894 Act. In the absence of any such evidence showing that the case warranted dispensation of the enquiry u/s 5-A, we find sufficient justification to accept the argument of the learned counsel for the petitioners that the Government has arbitrarily invoked the urgency clause contained in Section 17 of the Act.

11. For the reasons mentioned above, the writ petitions are allowed and the impugned notifications are quashed. It shall, however, be open to the respondents to take fresh proceedings for acquisition of the land in accordance with law for establishing a Polytechnic at Mansa Kalan. Parties are left to bear their own costs.