
(1978) 03 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1083 of 1974

Gurdev Singh and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 17-03-1978

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (1978) 03 P&H CK 0017

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Advocate : H.L. Sibal, with Mr. R.C. Setia, for the Appellant; Ashok Bhan and Mr. I.S. Tiwana, Add. A.G. (Punjab), for the Respondent

Final Decision : Allowed

Judgement

M.R. Sharma, J.—This order will also dispose of Civil Writ Petitions Nos. 1084, 1085, 1086, 1087 and 1427 of 1974.

2. The State of Punjab issued a notification u/s 4 of the Land Acquisition Act (hereinafter referred to as the Act) on February 21, 1974, declaring its intention to acquire the land of the petitioners for setting up a new Mandi Township at Goraya. On the same day another notification was issued u/s 6 of the Act, in which it was mentioned that since the public purpose for which land was being acquired was of urgent importance it would be open to the authorities concerned to proceed to take possession of the land in dispute u/s 17(2) (c) of the Act. The petitioners have challenged the legality of these two notifications inter alia on the ground that the setting up of a new Mandi Township being a long drawn out process, in fact, the purpose of acquisition was not a urgent importance. It has also been averred that the land of the petitioners was very fertile, yielding three crops in a year and that in the vicinity of the said land some other land which was not so productive was also available which could have been more conveniently acquired at less cost to the State exchequer.

3. In the return filed on behalf of the respondents Nos. 1 and 2 it has not been specifically denied that the land belonging to the petitioners was capable of yielding three crops in a year. The following reasons have been given for invoking the urgency provisions:--

The proceedings can be visited with the leading of evidence and a good number of adjournments. The Government on the executive side has no control over the statutory tribunal examining objections u/s 5-A so as to curtail or limit the time of disposal of the case u/s 5-A. The likelihood or say the danger of the case being prolonged so as to defeat the very aim of the Government in achieving a public purpose as a welfare state is not ruled out. Section 17 of the Act does give powers to the Government to take possession immediately if the aim of achieving a public purpose would be throttled otherwise. The uncertainty of the completion of proceedings u/s 5-A in a limited and specified period, there being nothing in the Act to this effect and the haunting danger of the proceedings being prolonged unduly and unnecessarily and the case remaining hanging fire before another superior tribunal and Court, is a very sufficient and a good circumstance for the Government to take a decision far taking an action u/s 17 in this case. By taking possession immediately, temporary arrangement for shaping and figuring the area for a grain market can be made by the Government which area is certainly more spacious to meet the requirement urgently.

4. Mr. Jasbir Singh Ahluwalia, who has stated these facts on affidavit, deserves to be congratulated for indulging in plain speaking. But I am somewhat astonished at the stand taken on behalf of the State Government. In substance it amounts to denying a statutory Tribunal a right to perform its duty of hearing objections u/s 5-A of the Act. The Tribunal itself is appointed by the State Government and if the latter at the time of appointing the Presiding Officer of the Tribunal does not take care to appoint such persons who dispose of the cases expeditiously, the citizens cannot be made to suffer. It has been held in a large number of cases that the right of a landowner to raise objections under sections 5-A of the Act about the feasibility of the acquisition is an important right which cannot be set at naught by adopting circuitous means. I could have understood if the plea raised on behalf of the State had been that the instant purpose of acquisition was of urgent importance. Unfortunately, the defence put forth relates to a matter of policy, designed to cope with the situation arising out of the lethargic working of the Tribunals. Such a defence is totally extraneous to the scope of section 17 of the Act. In *The Printers House Private Ltd. v. Misri Lal and others* ILR 1970 P&H. 76, a Full Bench of this Court had the occasion to deal with such a matter when it observed:--

We think, therefore, that if the question of urgency has been decided on grounds which are non-existent or irrelevant or on material on which it would be an impossible conclusion to reach, it could legitimately be inferred that the mind has not been applied at all. Even Mr. Kaushal conceded that the proved mala fides would alter the complexion of the conclusion reached on subjective satisfaction

on the question about the existence of urgent importance or urgency. It seems manifest to us that the question must be examined by Court before it could be found that the decision was reasonable. In other words, the question, is not such which could be declared non justiciable outright.

5. I am bound to follow this view with respect. I may also add that with the advancement of industrialization in the State of Punjab more and more burden has started falling on the petty farmers whose sole means of livelihood is agriculture. In the circumstances, the authorities exercising functions under the Act should try to follow the salutary provisions of S. 5-A of the Act, in its letter and spirit as far as possible, before making acquisitions of land. Such authorities should as far as possible, acquire inferior land so that the State exchequer may also not suffer. In this view of the matter the petition deserves to succeed.

6. Mr. Tiwana, learned Additional Advocate-General, Punjab, has, however, argued that the petitioners have filed references u/s 18 of the Act for claiming enhanced compensation and for that reason I should not quash the acquisition in proceedings under Article 226 of the Constitution. In support of his contention he has placed reliance on *Tirathalal De v. The State of West Bengal and others* 66 C.W.N. 115 and *Mohammad Habibullah Sahib and Others Vs. Special Deputy Collector for Land Acquisition Madras and Others*, The argument of Mr. Tiwana, if accepted, would bring about a curious situation. A landowner who has a genuine feeling that the notification regarding the acquisition of land is illegal would either have to challenge the legality of the notification by filing a petition under Article 226 of the Constitution or to forego his right to make such a challenge and to claim enhanced compensation only. I see no ground to introduce an element of uncertainty in the procedure which entitles a citizen to enforce his rights. The other ground impels me to take this view that the notification u/s 4 of the Act was issued on February 21, 1974 and the instant petition was filed on March 21, 1974 At the time of admission of the petition further proceedings were ordered to be stayed by the Motion Bench and according to the learned counsel for the petitioners the land owners continued to be in possession of the land. In the Madras case cited above the acquisition was challenged after a long delay of three years. In the circumstances, I see no force in the contention raised by Mr. Tiwana. These petitions are accordingly allowed with costs. Counsel's fee Rs. 300 in each case.