(1984) 03 P&H CK 0052

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 408 of 1974

Gurdit Singh and another APPELLANT

Vs

State of Punjab and others RESPONDENT

Date of Decision : 05-03-1984

Acts Referred:

Citation : (1984) CurLJ 247 : (1984) ILR (P&H) 252 : (1984) PLJ 375 : (1984) RRR 3

Hon'ble Judges : D.S.Tewatia, J and S.S.Sodhi, J

Advocate : Ravi Kapoor, Advocate, Mr. K.P. Bhandari, Senior Advocate,, Advocates for appearing Parties

Judgement

D.S. Tewatia, J.(Oral)

1. The present Letters Patent Appeal arises out of C.W.P. No.527 of 1969 wherein the petitionerappellants herein had impugned the notifications under sections 4 and 6 of the Land Acquisition Act (for short, the Act) issued by the Punjab State simultaneously on the same date, that is, November 21,1968 acquiring the given land which included land of the petitioners for public purpose for the construction of food grain godowns meant for Food Corporation of India at public expense.

2. The case set up by the petitioners was that Food Corporation of India for which the land was acquired was a Company and the acquisition proceedings had to comply with Part VII of the Act. In the return, the stand taken on behalf of the Government as well as the Food Corporation of India was :(i) that it was not a company, (ii) that the land was acquired at public expense "as the entire funds of Food Corporation of India are Central Government funds", and (iii) that the cost of construction of foodgrain godown is to be borne by the Central Government under a crash programme launched by the Central Government of India.

3. The learned Single Judge, who decided the writ petition, assumed that the land was acquired at the expense of the Government and referred to the fact that about Rs.15.00 lacs had been spent by the Central Government on the

construction of the godown.

4. At the time when learned Single Judge decided the case, their Lordship had not yet pronounced finally upon the question as to whether the Food Corporation of India for the purpose of Land Acquisition Act is to be treated a Company or to be treated as a department of the Government. However, what by then had been settled in number of cases by their Lordships was that the Government could acquire land for public purpose even for a private Company, if part of the compensation amount was to be contributed by the Government. When it does so, then the procedure prescribed in Part VII aforesaid of the Act does not have to be complied with. Somawanti v. State of Punjab, A.I.R. 1963 S.C. 151 is the decision in point.

5. The core of the controversy in this case is as to whether in fact there has been any contribution towards the compensation amount by the Government. The assumption of the learned Judge that the land was acquired at public expense is not supported by the pleadings of the parties. The stand taken by the Government in its return in reply to para Nos.4 and 5 is only this that the funds from which the payment for the acquired land was to be made were Government funds as the entire funds of the Food Corporation of India are Central Government funds.

6. In State of Punjab v. Raja Ram, A.I.R. 1981 S.C. 1694, where the land was acquired by the Punjab State for the construction of godown for the Food Corporation of India the identical challenge was posed to the validity of notifications and it was claimed that the acquisition was bad as it was not in accordance with Chapter VII of the Act. The stand taken on behalf of the Government was that Food Corporation of India was wholly owned by the Government and acquisition for Food Corporation of India was an acquisition for the Government as the entire funds of the Food Corporation of India were Government funds. Their Lordships held that the Food Corporation of India is not a Government department and that it is an autonomous company and its funds are its own funds whatever may have been the source of those funds and that the acquisition therefore was not at Government expense although it was for public purpose but the same was for the company and at Company''s expense. The notifications were quashed as according to their Lordships the land had not been acquired in accordance with law.

7. The ratio of Raja Ram''s case (supra) fits in like gloves to the present case. Here too, it is not the stand of the Government that apart from the funds of the Corporation which they claimed their own funds, any independent contribution towards compensation had been made by the Government. If anything, there is evidence to the contrary in this regard made available by the award wherein it is the Food Corporation of India which is called upon by the Land Acquisition Collector to pay for the compensation for the acquired land.

8. Mr. Riar, the learned counsel for the State sought to distinguish Raja Ram''s

case (supra) with the present case by urging that the question of State contribution towards compensation or the lack of it did not directly arise for consideration and decision in that case. There is no merit in the contention advanced by Mr. Riar. The question in that form did arise in Raja Ram''s case (supra) as it arises in the present case. In that case as in the present case, the funds of the Food Corporation of India were claimed on behalf of the respondent State to be the Government funds and the expenditure from the funds of the Food Corporation of India towards acquisition of the land was treated to have been incurred by the Government. Hence, on facts there exists no distinguishing feature.

9. Learned counsel for the State then lastly canvassed on the strength of the following observations of Full Bench of this Court reported as M.L. Gupta v. State of Punjab, A.I.R. 1966 Punjab 59, which had been referred to by the learned Single Judge in his judgment that notifications acquiring the land may not be quashed :

"There is an additional ground why I am of the view that we should not interfere with the impugned notifications in these proceedings. It is the case of the Government that after acquiring the land under the first notification, dated 9.8.62, since the matter was of urgent nature, they constructed buildings worth about Rs.60,000/ thereon. The petitioner filed the first writ petition challenging the previous notification on 21.11.62, that is, after about 31/2 months. Even then no stay order prohibiting the respondents from making any constructions on the land was obtained by him. It was for the first time on 29.10.63, when the previous case was referred to a Division Bench, that the petitioner got the stay order. It means that no stay was obtained for about 15 months after the issue of the first notification, with the result that during this period the Government went on making constructions on the land in question. The acceptance of the writ petition at this stage will result in a great loss to the Government and so far as the petitioner is concerned, he will get the proper compensation for his land and would thus suffer no loss."

This Court in Murari Lal Gupta''s case (supra) did not refrain from quashing the notifications not merely because of the fact that the High Court had declined to grant stay orders and in the meantime the Government had raised constructions on the land. In fact, the Bench otherwise found no merit in the writ petition and factum of construction was pressed into service as an additional reason.

10. In cases where the land is being acquired by the Government for purposes of great public benefit and utility and that the execution whereof brook no delay, it is the norm with the Court to allow the implementation of the scheme if the challenge to the notification is on a technical ground and otherwise the land could be acquired under the Land Acquisition Act. And when the case comes up for hearing, and it becomes necessary to quash the notifications, what happens as a result thereof is only this that the Government has to issue a fresh notification and acquire land in accordance with law and as a result of the change

of date of notification under section 4 of the Act it may have to pay an extra compensation to the owners of the land.

11. For the reasons aforementioned, we hold that the land has not been acquired in accordance with law and the notifications issued under sections 4 and 6 of the Act being clearly illegal the same are quashed. The Letters Patent Appeal is allowed and the judgment of the learned Single Judge is set aside.

12. We may add that it would be open to the Government to acquire the land afresh in accordance with law. We also direct that the appellants shall not take possession of the land in question from the respondent Nos.1 and 2 for six months from today by which time one hopes it would be possible for the Government and Food Corporation of India to reacquire the land.

13. Oral request for leave to file appeal in the Supreme Court is declined. No order as to costs.