
(1996) 11 P&H CK 0050
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 912 of 1988

Gurmel Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 22-11-1996

Acts Referred:

Citation : (1997) 2 RCR(Civil) 558

Hon'ble Judges : R.L.Anand, J

Advocate : Mr. Ravinder Chopra, Advocate., Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. Gurmel Singh and others have filed the present writ petition under Articles 226/227 of the Constitution of India praying for setting aside the notification issued under Section 6 of the Land Acquisition Act and it has been further prayed that directions be also issued to the respondents i.e. State of Punjab and the Land Acquisition Officer, Faridkot restraining them from interfering in the peaceful possession of the petitioners.

2. It has been averred in the petition that no notification under Section 4 of the Punjab Land Acquisition Act (hereinafter called the Act) was issued by the respondents and it was mandatory on their part to do so when any land is to be acquired which is needed for public purposes. Such notification was supposed to be published in the official Gazette and in two Daily Newspapers circulating in that locality of which atleast one should be in the regional language. After the said notification under Section 4, it would be open for the Government to enter upon survey and take level of such land in that locality. It was also supposed to tender payment of necessary damages, if any. Thereafter the objections were supposed to be heard before the Collector. After complying with the provisions under Sections 4, 5 and 5A of the Act a declaration can be made under Section 6 of the Act that the land is required for public purposes. After the declaration, it was obligatory on the part of the respondents to issue notice to all the persons interested in the land to be acquired so that they may file the objections against

the taking of the possession of the land. Thereafter, the Collector was supposed to assess the compensation. It is grouse of the petitioners that in the present case no notice under Section 4 of the Act was ever issued nor there was any publication. The compliance of Sections 5 and 5A of the Act have not been done. The State Govt. has straightway adopted the procedure under Section 6 of the Act by issuing a notification which notification is also bad as it was not issued in accordance with the law nor it was circulated any newspaper. The notification under Section 6 dated 17.4.1964 came to the notice of the petitioners only on 18.1.1988 when certain officials of the respondents came to the land of the petitioners in order to take the possession. Even after the issuance of the notification under Section 6, the Collector did not give any order to take the possession under Section 7 of the Act. No notice was given to the landowners including the petitioners to file their objections under Section 9 of the said Act. It has also been pleaded that the entire alleged procedure, if any, had been adopted at the back of the landowners so much so the Collector failed in its statutory duty for noncomplying the provisions of Section 12 of the Act when it did not serve notice upon the landowners regarding the passing of the award. The petitioners allege that the acquisition proceedings are arbitrary and in colourable exercise of the powers as no meaningful steps have been taken in the proceedings before the notification was issued. There was no genuine need of the land sought to be acquired and it was only with a view to peg down the market price of the acquired land.

3. Notice of the writ petition was given to the respondents who filed written statement and denied the allegations. According to these respondents, the notification under Sections 4 and 17(1) was issued vide Govt. Notification No. 14021/Central dated 22.1.1963, AnnexureA. Under the Land Acquisition Act as stood prior to 1980 it was not required to publish such notification. With the issuance of the notification under Section 4 read with Section 17(1), the provisions of Section 5 of the Act were not supposed to be complied with. The award was passed on 28.3.1977 by the Collector and it was announced on the same day. Notification under Section 6 read with Section 17(1) of the Act was issued on 17.4.1964 AnnexureB. This notification was also not required to be published in the press prior to 1980. It was denied that the petitioners came to know about the notification under Section 6 on 18.1.1988. In fact, the petitioners were quite aware of all the notifications. The payment to all the petitioners except Gurmel Singh were made through registered letters on 5.4.1978. No land stood in the name of Gurmel Singh as held in the award. The land was acquired for the construction of Chand Bhan drain. In case the petitioners have not received the payments, they can obtain their payment from the Land Acquisition Officer, Patiala. The possession of the aforesaid land was transferred to the Drainage Department vide mutation No. 2406 dated 11.7.1979. The petitioners wanted to take forcible possession of the land from the Govt. officials. The drain stands excavated throughout its length except a small strip starting from RD No. 2500032500 in the right half portion. The left half portion of drain in this reach

has already been excavated. The land in question was acquired after observing proper procedure under the Act and within the stipulated period as required under the Rules. All procedural formalities were complied before the pronouncement of the award on 28.3.1977. The notification under Section 17(1) was issued in order to save the life and property of the public. The petitioners have no right to file the present petition and accordingly it was prayed that the writ petition be dismissed.

4. I have heard Shri Ravinder Chopra, Advocate, on behalf of the petitioners and Shri P.S. Chhina, Sr. D.A.G., (Punjab), on behalf of the respondents and with their assistance have gone through the record of this case and I am of the considered opinion that this writ petition has no merit.

5. The entire challenge of the petitioners in the present writ petition is that before the acquisition of the land, the mandatory procedure as contemplated under Sections 4, 6 and other relevant provisions of the law had not been complied with and as a result of that the acquisition becomes bad. This part of the case of the petitioners is without any merit. The present acquisition as per Department is prior to 1980. Section 4(1) of the Land Acquisition Act as it stood prior to 1980 states that whenever it appears to the appropriate Govt. that the land in any locality is needed or likely to be needed for any public purpose a notification to that effect shall be published in the official gazette and Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. My attention has been invited to Annexure "A" which is notification under Section 4 of the Land Acquisition Act dated 22.11.1963. It is clearly specified in the notification that it appears to the State Govt. that the land is likely to be required to be taken by the Govt. at public expense for a public purpose for constructing Chand Bhan drain in Tehsil Faridkot and Bhatinda and the land in the locality as mentioned in the notification is likely to be required for the said purpose. Thus it would be clear that due compliance of section 4(1) of the Act was performed. My attention has yet been invited to notification Annexure "B" dated 17.4.64 which was issued under Section 6 read with Section 17(1) of the Act. A declaration was made by the Govt. that the land specified in the notification was required for public purpose i.e. for the construction of Chand Bhan drain. Also it was notified to all the persons concerned about the intention of the Govt. to acquire the land and directions were also issued as required under Section 7 of the Act, to the Land Acquisition Officer to take orders for the acquisition of the land. Section 17(1) of the Land Acquisition Act lays down that "in case of urgency whenever the appropriate Govt. so directs, the Collector though no award has been made as required under Section 12 may on the expiration of 15 days from the publication of notice mentioned in Section 9(1) take possession of any waste or arable (land) needed for public purposes. Such land shall thereupon vest absolutely in the Govt. free from all encumbrances. A reference through notification dated 17.4.1964 Annexures A and B would show that the State Govt. showed its urgency of the acquisition and exercised its power under Section 17(1) and directed the Land

Acquisition Officer, Ludhiana to proceed in order to take possession of the land specified in the notification itself. As the land in question was acquired for public purpose in order to construct the drain and the object of the acquisition was to check the flood water so that it may not damage the life and property of the inhabitants. Therefore, it was not necessary to comply the provisions of Sections 5 and 5A of the Act. It has been held in 1996 JT (3) Supreme Court 60 Bal Kukand Khatri Educational and Industrial Trust v. State of Punjab that State Govt. is in power to exercise the urgency clause under Section 17(1) and to dispense with the enquiry under Section 5A of the Act. In the present case also it has been categorically stated in the notification AnnexureB dated 17.4.1964 that urgency existed for the acquisition and the Land Acquisition Officer, Ludhiana was authorised to proceed in order to take the possession. Even from the return of the respondents it is quite clear that the land was acquired for the purpose of construction of the drain and it cannot be disputed that this acquisition was not for public purpose. The learned counsel for the petitioner has not been able to show that the procedure adopted by the respondent authorities in the present acquisition was violative of any of the provisions of the Land Acquisition Act or that the State acquired the area in the alleged colourable exercise of its powers. It is also not established on record that there was no genuine need on the part of the State Government for the acquisition of the land.

Resultantly, there is no merit in this writ petition, which is hereby dismissed leaving the parties to bear their own costs.