

(1988) 09 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 876 of 1987 in Civil Writ Petition No. 5007 of 1987

Gurmit Kaur

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 14-09-1988

Acts Referred:

Citation : (1989) PLJ 704 : (1989) 1 RRR 547

Hon'ble Judges : Manmohan Singh Liberhan, J

Judgement

Manmohan Singh Liberhan, J.

1. The factual matrix for the purposes of this application is that the petitioners have sought the quashing of the notifications under sections 4 and 6 of the Land Acquisition Act (hereinafter referred to as the Act) for the acquisition of their land. The applicant the Sutlaj Cooperative Sugar Mills Limited, Nakodar, preferred this application under Order I Rule 10, Code of Civil Procedure, for being impleaded as a party to the writ petition. The applicant claimed that the land dispute was acquired for the company, hence, it is a necessary and proper party. It was further claimed that any order passed in favour of the petitioners in the writ proceedings would adversely affect its interest.

2. The application is being opposed by the petitioners. It is contented that petitioners are the dominus lis. The applicant has no privity in the cause of action of the petitioners. The applicant may be successor in interest of the State but it is neither proper nor the necessary party under Act the only right given to the applicant is that they are entitled to lead evidence before the authorities under the Act for the purposes of determining the market value of the land. It is further contented that the dispute whether the persons for whom the land has been acquired are necessary and proper parties and can be impleaded is not res integra. It has been authoritatively laid down by the dictum of the Full Bench reported in M/s Kulbhushan Kumar and Co. v. State of Punjab and another, AIR 1984 Punjab and Haryana 55 : 1984 R.R.R. 674 by following the earlier Ful

Bench decision reported in *M/s. Indo Swiss Time Limited v. Umrao and others*, 1981 R.L.R. 403, that the persons for whose benefit the land has been acquired is neither a necessary nor a proper party and cannot be impleaded as such.

3. Counsel for the applicant controverts the submissions of the counsel for the writ petitioners and contends that the matter is covered by judgment of their lordships of the Supreme Court reported in *Himalaya Tiles and Marble (P) Ltd. v. Francis Victor Coutinho*, AIR 1980 SC 1118 wherein it has been observed that "person interested" in case of an acquisition of land for a company is (i) who is to pay the compensation under the agreement and in section 18 of the Act "person interested" is given an inclusive definition which should be liberally construed to embrace all persons who may directly or indirectly be interested either in the title of the land or in quantum of compensation. In view of the observations made the Supreme Court found that the company for whose benefit the land has been acquired under the Act is the person interested and is a necessary and proper party in writ proceedings for quashing the notifications under sections 4 and 6 of the Act.

4. However, a contrary view has been taken in the judgment reported in *Municipal Corporation v. Chandulal Shamaldas Patel*, 1971 (3) SCC 821. The counsel for the applicant further contends that "person interested" has been defined in section 3 (b) of the Act as under :

"3 (b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;"

Further, the expression "Court" has been defined in section 3 (d) of the Act which reads as under :

"3(d) the expression "Court" means a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act;"

The learned counsel further refers to section 53 of the Act wherein it has been provided that the Code of Civil Procedure shall apply to the proceedings before the authorities so far as they are not inconsistent with anything contained in the Act. By referring to the said provisions, the counsel for the applicant contents that Order 1 rule 10 of the Code of Civil Procedure is not inconsistent with the provisions of the Act and the applicant's interest shall be adversely affected in case the acquisition proceedings are quashed. Therefore, the applicant is the necessary and proper party.

5. In support of the above submissions, the learned counsel for the applicant relies upon the following judgments :

"1. *Jagir Singh and others v. Rameshwar Singh and others*, 1983 CLJ 312.

2. Rajinder Singh v. Jaswant Singh and another 1987 PLJ 68 : 1987 R.R.R. 465 and.

3. Jangir Singh v. Gurdit Singh and others, 1988(2) RLR 175 : 1988(2) R.R.R. 283.

6. Counsel for the applicant further contends that the judgments cited by the counsel for the petitioners, that is M/s. Kulbhushan Kumar and Co."s case, M/s. Indo Swiss Time Limited (supra), and Municipal Corporation v. Chandulal Shamaldas Patel"s case (supra), are not *pari materia* on the facts of case in hand. It is contended that herein the applicant has already taken possession of the land in dispute and has erected the mill on it while that was not the situation on facts in the judgments cited by the counsel for the writpetitioners. In view of the subsequent events, having taken place, including the award having been given and compensation deposited, the land stood vested in the State free from all encumbrances under the Act, and the State delivered possession of the land in dispute to the applicant, partly on 27th June 1987 and the remaining on 30th June, 1987. Thus, the applicant has a living interest in the proceedings.

7. Learned counsel for the petitioners controverts the factual submissions made by the counsel for the applicant and contends that the petitioners were in actual physical possession of the land in dispute and their dispossession was stayed by this Court on 6th August 1987, which order has not been got modified till date. In reply, the learned counsel for the applicant contends that there was not need to get the order of stay modified as the applicant had already taken possession of the land in dispute.

8. Be that as it may, I need not to go into the controversy with regard to possession at this stage. In my view, taking of possession or vesting of the land in dispute in the State is of no consequence so far as the application for being impleaded as a party is concerned. Admittedly the lis is between the State and the writpetitioners, that is the landowners. The rights of the applicant in the land acquisition proceedings have been restricted by section 50 of the Act which provides that it may adduce evidence for the purposes of determining the amount of compensation. Section 50 of the Act reads as under :

"50. Acquisition of land at cost of a local authority or Company :

(1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a legal authority or of any Company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation :

Provided that no such local authority or Company shall be entitled to demand a reference under section 18."

Giving the applicant any other right under Order 1, rule 10, Code of Civil Procedure, shall be contrary to the provisions of section 50 of the Act.

9. It is further contended by the counsel of the applicant that under the High Court and Order known as Writ Jurisdiction (Punjab and Haryana) Rules, 1976, the Code of Civil Procedure, 1908, has been made applicable mutatis mutandi to the writ proceedings insofar as they are not inconsistent with these Rules. In view of my above observations with respect to the applicability of Order 1, rule 10, Code of Civil Procedure this contention of the learned counsel for the applicant cannot hold the ground and has been noted only as it was raised.

10. Be that as it is, I am bound by the judgments of the Full Bench of this Court, reported in M/s Kulbhushan Kumar and Co. and M/s Indo Swiss Time Limited cases (supra) wherein after considering the contra views of their Lordships of the Supreme Court, it was laid that the person for whose benefit the land has been acquired cannot be impleaded as a party in the land acquisition proceedings. I am in respectful agreement with the dictum laid down by the Full Bench.

11. The judgments cited by the counsel for the applicant are not *pari materia* with the facts and circumstances of the case in hand nor in law. There is no dispute with the dictum laid down in the said judgments. However, in view of the Full Bench judgment relating to the land acquisition proceedings itself, they are not attracted even on principles to the facts of the present case.

12. In view of my above observations, I find no force in the application. The same is dismissed with costs. Counsel's fee Rs. 500/.