
(1965) 04 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 24 of 1965

Harbans Singh, Harnam Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 05-04-1965

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11, 12, 14, 15
Northern India Canal and Drainage Act, 1873 — Section 57

Citation : AIR 1965 P&H 356 : (1965) 2 ILR (P&H) 650

Hon'ble Judges : S.B. Capoor, J;I.D. Dua, J;H.R. Khanna, J

Bench : Full Bench

Judgement

S.B. Capoor, J.

(1) This Letters Patent appeal is directed against the order, dated the 7th January, 1965 of a learned Singh Judge of this Court whereby he dismissed the appellants civil writ petition under Arts. 226/227 of the Constitution of India.

(2) It has been placed before the Full Bench on account of the submission by MR. H. R. Sodhi learned counsel for the appellants that there was conflict of opinion between two Division Benches of our Court. These are Chanan Singh v. State of Punjab (Civil Writ No. 262 of 1961) reported in 65 Pun L R 732, and unreported judgment in Bhagat Singh v. State of Punjab Civil Writ No. 1461 of 1963 D/- 25-5-1964 (Punj).

(3) The appellants are some of the land-owners in village of Laroya, Sagranwali and Tandi Tehsil and District Julundur. It is alleged in the petition that there is a stream or Cho coming from Hoshiarpur District and passing through the districts of Jullundur and Gurdaspur. It is known Mangrowal Cho. The canal authorities planned to dig out a drain for carrying away the water flowing in this Cho and initially the alignment of this drain was towards the western side of villages Tandi and Sagranwali and the drain did not pass through village Laroya. the land through which this alignment was proposed was mostly Barani and some of it was unfit for cultivation. The canal authorities had not prepared any drainage

scheme as required by the Northern India Canal and Drainage Act 1873 (hereinafter to be referred to as the Act). But as the land of the appellants remained indifferent. However certain persons owning the land affected by the alignment approached the higher authorities and managed to drain was to pass through the land of the appellants. No scheme as envisaged by section 57 of the Act was framed relating to the construction of this drain and the appellants were not given an opportunity to raise objections to the new proposal. It was said that the whole procedure adopted was arbitrary and illegal that no land of the appellants could be taken except on payment of proper compensation and that the State Government if it intended to acquire any part of the land was bound to take action under the Land Acquisition Act as well. At the instances of the appellants the Executive Engineer stayed the digging operation till the 31st July, 1963, to enable them to bring a stay order. The petition was instituted on the 31st July 1963. It was admitted the next day and an interim stay of digging operation on the appellants land was granted.

(4) The petition was opposed on behalf of the Punjab State which was respondent No. 2 to the petition and an affidavit in opposition has been furnished by the Executive Engineer of the Hoshiarpur Drainage Division Jullundur who was respondent No. 2 to the petition. It was pointed out that the previous alignment as suggested by the appellants was examined and not found to be technically suitable and the alignment which is now objected to had been approved since 1961. It was asserted that the question of framing of any scheme under the Act did not arise as the Act related to the framing of the scheme for acquisition of water-course or canal whereas in the present case the land was being acquired. It was pointed out that notification under Ss. 4 and 17 of the Land Acquisition Act 1894 (Act No. 1 of 1894), had already been notified for the purpose of land acquisition respectively in village. Laroya Tandi and Sagranwali. A notification under S. 6 of the Act had also been issued and a copy of Notification No. 26143 dated the 26th November, 1963 has now been placed on the record. The public purpose for which the acquisition at public expense was proposed to be made is stated in the notification which is the land was proposed to be acquired for training and canalising Mehargarwal group of Chose from R. D. 586-10-8-1000 in Jullundur District. The land was proposed to be acquired not only in the three villages to which the appellants belong but also in four other villages in Jullundur District. The allegations of mala fides were denied.

(5) The learned Judge in the order under appeal has observed that the mala fides as alleged in paragraph 7 of the writ petition has not been substantiated and Mr. Sodhi learned counsel for the appellants quite rightly did not at the hearing of the appeal raise any argument on the ground of mala fides. The writ petition was dismissed because the learned Judge considered that the other points raised in the writ petition were covered by the Division Bench decision of this Court in Civil Writ No. 1463 of 1963 D/- 25-5-1964 (Punj).

(6) The substantial question which has been canvassed by Mr. Sodhi in this

appeal is that when the State Government proposes to construct any drainage work it incumbent on it under S. 57 of the Act to cause to be drawn up a scheme and since admittedly no such scheme has either been drawn up or published the proposal for constructing the drainage work in question is liable to be struck down. No reference was made in the writ petition to any proceedings initiated by the State Government under the Land Acquisition Act in respect of the land in question and on the other had it was contended that the State Government if it intends to acquire any land from the appellants must proceed under the Land Acquisition Act and award compensation. When it was pointed out in there turn that no proceedings were being taken under the act and that on the other hand the State Government was taking steps to acquire the land of the appellants according to the procedure laid down in the Land Acquisition act the contention was advanced that proceedings under the Land Acquisition act which was a general Act could not be in substitution of the proceedings laid down in S. 57 of the Act and the maxim *generalia specialibus non derogant* is involved.

(7) For a proper appreciation of these arguments it is necessary to consider the respective schemes of the Northern India Canal and Drainage Act, 1873, and the Land Acquisition Act, 1894. The purpose of the former is to regulate irrigation navigation and drainage in Northern India. Various sections of the act incidentally also provide for the award of compensation to those whose rights may be affected by the action taken by the State Government under the Act. Under S. 5 the State Government is empowered to apply or use the water of any river or stream flowing in a natural channel or of nay lake or other natural collection of still water for the purposes of an y existing or projected canal or drainage-work, and it issues a notification for the purpose. u/s 7 the Collector is also required to issue public notice the Collector is also required to issue public notice at convenient places stating that claims for compensation in respect of the matters mentioned in section 8 may be made before him. These matters do not include payment for any land which may have to be acquired outright for the purposes of land was to be governed by the provisions of the Land Acquisition Act. The claims which are to enquired into by the Collector for the purposes of determining the amount of compensation are to be dealt with under sections 9 to 12 (inclusive), 14 and 15, 18 to 23 (inclusive), 26 to 40 (inclusive) 51, 57, 58 and 59 of Land Acquisition Act, 1870. It is significant that sections 24 and 25 of that Act which roughly correspond to sections 23 and 24 of the Land Acquisition Act of 1894 and contain the principles for assessing the market value of the land acquired are not made applicable to the Collector's proceedings u/s 10 of the Act.

(8) The next section in which reference is made to the procedure for awarding compensation is section 28. Section 21 provided for making a application by any person desiring the construction of a new water course and section 23 for an application by any person desiring than existing watercourse should be transferred form its preset owner to himself. u/s 28 no such applicant shall be placed in occupation of such land or watercourse until he has paid to the person named by the Collector such amount as the Collector determines to be due as

compensation for the land or watercourse not occupied or transferred and for any damage caused by the marking out or occupation of such land together with all expenses incidental to such occupation or transfer. This section further provides that in determining the compensation to be made under this section the Collector shall proceed under the provisions of the Land Acquisition Act, 1870, or of the person to be compensated so desires award such compensation in the form of a rent-charge.

(9) u/s 30A the Divisional Canal Officer is empowered on his own motion or on the application of shareholder to prepare a draft scheme to provide for various matters including the construction, alteration extension and alignment of any watercourse or realignment of any existing watercourse the lining of any watercourse etc. The scheme is to be published in the prescribed form inviting objections and suggestions and is to be finally approved by the Superintending Canal Officer. The shareholders are required u/s 30c to implement the scheme at their own costs. u/s 30 D the Divisional Canal Officer may after considering any objections to be made by any person interested acquire any land required for implementation of the schemes. Compensation to be fixed by the Divisional Canal Officer on the principles set out u/s 23 of the Land Acquisition Act 1894 shall be payable by the shareholders to the owners or occupier of any land for such acquisition. Appeal from the order of the Divisional Canal Officer lies to the Collector. It will be seen that the procedure is (apart from the principles to be observed in paying the compensation) substantially different from that given in the Land Acquisition Act. Moreover inasmuch as the and u/s 30D is to be acquired outright there is a specific reference to the principles of section 23 of the Land Acquisition Act 1894, while in section 28 and 10 the reference is to the provisions of the Land Acquisition Act 1870. Then comes the directly relevant section which is 57 and is as followed:

"57. Whenever it appears to the State Government that any drainage-works are necessary for the improvement of any lands or for the proper cultivation or irrigation thereof,

or that protection from floods or other accumulations of water, or from erosion by a river is required for any lands,

the State Government may cause a scheme for such drainage-works to be drawn up and published together with an estimate of its cost and a statement of the proportion of such cost which the State Governments proposes to defray and a schedule of the lands which it is proposed to make chargeable in respect of the scheme."

Claims to compensation are to be disposed of in accordance with section 61 which is as below:

"61. Wherever in pursuance of a notification made u/s 55 any obstructions is removed or modified,

or whenever any drainage-work is carried out u/s 57,

all claims for compensation on account of any loss consequent on the removal or modification of the said obstruction or the construction of such worked may be made before the Collector and he shall deal with the same in the manner provided in section 10."

The important point so far as these sections are concerned are firstly that the object is the improvement proper cultivation or irrigation or protection from floods or from erosion by river of specific lands and secondly that primarily the owners of the land made chargeable in the scheme drawn up u/s 57 are to pay for the scheme (vide section 59) though it is open to the State Government to decide that a certain proportion of the cost would be defrayed by it. The obvious reason for this is that by the works undertaken under the scheme drawn up u/s 57 the benefit goes directly to the owners of the lands and the indication of this is given in the margin of section 59 which is: "Rate on lands benefited by works." This is the very reason for which compensation awarded u/s 28 is to be made payable by the private party which applied for the derived benefit from construction of the new watercourse or transfer of an existing watercourse to himself from its existing owner, and the reasons for which compensation awarded under S. 30D is made payable by the share-holders who received the benefit from the scheme prepared under S. 30A. Thus broadly speaking the procedure as given in S. 57 just as in the case of action taken under Ss. 21 and 23 and in the cost incurred and hence it is only just and fair that the authorities while preparing schemes and give the persons concerned an opportunity of lodging objections if any.

(10) Coming now to the Land Acquisition Act the central feature is that it is meant for the acquisition of a land needed for public purposes (and for companies and this is so stated in the preamble. The proceedings start under S. 4 with a notification made by the appropriate Government in the Official Gazette to the effect that the land is likely to be needed for any public purpose. Under S. 5A any person interested in any land which has been notified under S. 4 may within thirty days after the issue of the notification object to the acquisition of the land or of any land in the locality as the case may be and the Collector after giving hearing to the objector and due enquiry has to report to Government the decision of which on the objections is made final. Under S. 9 public notice is given by the Collector for claims to compensation being lodged before him. and detailed procedure is laid down for the award of the Collector and in any cases of dispute for reference of Court. Section 23 lays down various considerations which have to be kept in view in determining compensation and S. 24 relates to matters which are not to be taken into consideration for the purpose of compensation. The concept of "public purpose" is well-known; it means the general interest of the community or a section thereof as opposed to particular interest of the individual who is directly and vitally concerned: *Hamabai Framjee Petit v Secy of State* AIR 1913 P C 20. It tends to develop the natural resources

of the State or preserves or promotes the public health comfort safety or convenience the public or a section thereof irrespective of the fact whether the individual members of the public may or may not make use of the acquired property: *Amulya Chandra v. Corporation of Calcutta* AIR 1922 PC 333.

(11) Thus there is clear-cut and rational ground of distinction between acquisition of land for public purposes under the Land Acquisition Act and any acquisition of land which may become necessary under the schemes drawn up under S. 57 of the Act or for the matter of that under S. 30 a which schemes are as stated above primarily for the benefit of the land owners in a particular estate. As would be clear from the notification of the State Government No. 26142 dated the 26th November, 1963, the land stated in the notification is to be acquired at the public expense and for the public purpose of training and canalising Mehangrawal group of Choes in several villages in the Jullundur District. The ravages caused by the Choes during the monsoon floods in the sub-mountain regions of this State are well known and as early as the year 1900 (vide Punjab Land Preservation Act No. 2 of 1900), a special provision was made for control over the beds of Choes. Prima Facie the training and canalising of the particular group of choes is a public purpose and is a laudable public purpose. The argument advances on behalf of the appellants however is that the proposed works come under S. 57 of the act and since this Act is special Act it will on the principle of *generalia specialibus non derogant* by necessary that the initial step should be the preparation of a scheme under S. 57 and not the mere issue of a notification under S. 4 or other sections of the Land Acquisitions Act.

(12) The above maxim has been explained and illustrated in *Craies on Statute law* at pp. 376 to 381 of the Sixth Edition. The rule in effect is that a subsequent general Act does not affect a prior special Act by implication. In *Barker v. Edger* (1898) AC 748(754)(P C) this rule was stated in the following words:--

"When the legislature has given its attention to a separate subject and made provision for it the presumption is that a subsequent general enactment is not intended to interfere with the special provisions unless it manifests that intention very clearly. Each enactment must be constructed in that respect according to its own subject-matter and its own terms."

The latter qualification is important for the purpose of this case. It is not correct to say that the Land Acquisition Act is a vis-a-vis act No. 8 of 1873 a subsequent enactment because even before 1873 there was the Land Acquisition act of the year 1870(Act No. 10 of 1870) which the Act of 1894 repealed. More important the scope of the two statutes is substantially different the Land Acquisition Act relating to acquisition for public purposes (or of companies), S. 57 (and other sections as mentioned above) of Act 8 of 1873 concerning acquisition of land for the benefit of land owners in particular estates and at their cost (except in so far as the State Government chooses to defray the cost or pay proportion of it the legal maxim relied upon can be attracted and the procedure available to the Government for acquisition of land for public purposes under the Land Acquisition

Act be deemed to be shut out by reason of the provisions of S. 57 of Act 8 of 1873.

(13) MR. Sodhi to buttress his argument cited certain observations as to the interpretation of statutes in AIR 1931 149 (Privy Council) , and The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, . What as held in the former case was that where certain provisions form an existing Act have been incorporated into a subsequent Act no addition to the former Act which is not expressly made applicable to the subsequent Act can be deemed to be incorporated in it at all vents if it is possibly for the subsequent Act to function effectually without the addition. This was just an illustration of the principle of *generalia specialibus non derogant* and of no direct application to the case before us. In the latter case their Lordships of the Supreme Court quoted with approval the following observations from *Pretty v. Solly* (1859) 53 E. R. 1932:--

"The rule is that whenever there is a particular enactment and a general enactment in the same statute and the latter taken in its most comprehensive sense would overrule the former the particular enactment must be operative and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply."

In the instant case however there are two statues with essentially different scope and as laid down in Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, at pp. to 699 the question of repugnancy (and so also of exclusion) would not arise if the two pieces of legislation deal with the separate and distinct matters though of a cognate and allied character.

(14) Another ground of distinction which the learned counsel for the State sought to draw between the two statutes was that section 61 of Act No. 8 of 1873 did not contemplate claims for compensation on account of outright acquisition of any land and in this connection pointed out that the Collector was to deal with the claims of compensation outright acquisition of land. It is however not necessary to consider this argument further because Mr. Sodhi's objection is not as to the particular statute under which the claim for compensation is to be entertained and decided but it is that in the case before us it was incumbent on the State Government to draw up a scheme u/s 57 and I have already give reasons above for holding that it was not so incumbent.

(15) The only two decided cases of our Court directly bearing on the point are C. W. No. 1461 1963 (Punj) which also disposed of *Dilawar Singh v, State of Punjab* (C. W. No. 184 of 1964) and the other case C. W. No. 262 of 1961) reported as 65 PL R 372. So far as the former case is concerned the conclusion arrived at on the point in issue was the same as stated by me and it was held that the two Acts v. z. Act No. 8 of 1873 and the Land Acquisition do not necessarily cover the same ground relating to the same purpose that they can co-exist and there is no question of applicability of one to the exclusion of the other. Chanan Singh's

Case Civil Writ No. 262 of 1961: 65 PL R 732 was cited before Division Bench and Mehar Singh J., who delivered the judgment in Dalip Singh's case (Sic Bhagat Singh's case?) and was one of the learned Judges constituting the Bench in Chanan Singh's case Civil writ No. 262 of 1961: 65 PL R 732 observed as follows:

"In fact in 65 PLR 732 a concession by the counsel for the parties that "that Land Acquisition Act and the Northern India Canal and Drainage Act can co-exist and there is no question of the applicability of one of the exclusion of the other" was accepted by a Division Bench of this Court of which I was a member."

(16) In Chanan Singh's case (Civil Writ No. 262 of 1961: 65 PL R 732 the objection was as to the acquisition made by the Government for a drain to carry away the "sem" (sub-soil) water in the village of the petitioners for which a draft scheme had neither been prepared u/s 30A nor published u/s 3--B of the Act. A point was taken during the arguments as to whether the acquisition of land was governed by the Land Acquisition Act or the Northern India Canal and Drainage Act. It appears from the report of that case that on account of the definition of drainage-work as contained in sub-section (3) of section 3 section 30A, of the Act was considered not to be attracted and it was in these circumstances that the above concession was made by the counsel. However, the learned counsel for the petitioners in that case pressed an alternative argument to the effect that the alignment of the water drain had been varied at the instances of the Minister consider without complying with the provisions of section 57 of the act and my learned brother Dual J who delivered that judgment and with whom Mehar Singh J agreed held that the Minister was not competent under the Act to pass any order changing the alignment and that it was the Chief Engineer also who has to apply his mind to the facts of a particular case and make the necessary order with regard to the alignment. That is why the writ petition was allowed Mr. Sodhi learned counsel for the appellants pointed out that in chanan Singh's case Civil Writ No. 262 of 1961: 65 PLR 732 also the Land Acquisition Act for acquiring the land and it may be inferred that if the Bench was of the unnecessary to follow the procedure in section 57 of the Act. However it is evident from the report of the case that no such argument was pressed before the Bench by the counsel for the respondents. This could have been (as appears form the record of the case) in view of an application supported to the effect that the provisions of section 9 of the Land Acquisition Act had not been complied with.

(17) Thus Chanan Singh's case Civil Writ No. 261 of 1961: 65 PL R 732 does not decided anything contrary to what was held on this particular point in Dalip Singh's case. (Sic, bhagat Singhs" case?). It would also be relevant to note that the in the proceedings under the Land Acquisition Act the entire cost of the acquisition is to be defrayed from the revenue of the State, while in case of scheme prepared u/s 57 of the Act part of the cost at least is to be borne by the land owners whose land would be benefited by the drainage-works and such sums can eventually u/s 59 of the Act be recovered from the land owners

concerned if they were in arrears of land revenue. There is nothing in the relevant sections of the Act or in the rules framed under sections 57 59 and 60 of the Act providing specifically for objections against the acquisition itself while u/s 5A of the Land Acquisition Act objections may be preferred to the acquisition of the land or nay land. The procedure provided under the Land Revenue Act is much more favourable to the land owners that n under the relevant section of Act No. 8 of 1873 and I fail to see what legitimate grievance the appellants cash have if the State Government considering that the acquisition of the land is for a public purpose proceeds under the Land Acquisition Act and not u/s 57 of the Act No. 8 of 1873.

(18) I would therefore dismiss the appeal but in the circumstances of the case make no order as to costs.

H. R. Khanna, J.

(19) I agree.

Inder Dev Dua, J.

(20) So do I.