

(1996) 09 P&H CK 0167
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11836 of 1996

Hardial Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 07-09-1996

Acts Referred:

Citation : (1997) 1 ICC 649 : (1997) 2 LLR 193 : (1997) 1 PLJ 524 : (1997) 1 PLR 238 : (1997) 2 RCR(Civil) 174

Hon'ble Judges : Amarjit Chaudhary, J and K.K.Srivastava, J

Advocate : Mr. S.S. Brar, Advocate, Mr. Randhir Singh DAG, Punjab., Advocates for appearing Parties

Judgement

K.K. Srivastava, J.—This is a writ petition filed under articles 226 & 227 of the Constitution of India praying for the quashing of notification dated 22.2.1996 issued by respondent No. 1, a copy of which has been placed on record as annexure P1, acquiring land detailed therein for constructing link channel from RDO17190 off taking from RD 184480/Right Sirhind Feeder in Tehsil and District Muktsar. The said notification has been issued under Section 4 of the Land Acquisition Act, 1894 (for short the Act). The Government of Punjab further directed that the action under Section 17 of the Act shall be taken on the grounds of urgency and provision of Section 5A of the Act shall not apply in regard to the acquisition of the land. The petitioners, residents of Tehsil and District Muktsar felt aggrieved against the notification, annexure P1, and they seek the issuance of the writ of certiorari for quashing the notification dated 22.2.1996, annexure P1, aforesaid.

2. The grounds on which the impugned notification has been challenged are : (1) the impugned notification is totally uncalled for, arbitrary and based on mala fide and extraneous considerations; (2) the impugned notification deprives the petitioners of their valuable right to file objections by wrongly invoking the provisions of Section 17 of the Act which are not called for in the facts of the present case. A large number of villagers are adversely affected by the proposed

acquisition of land for construction of new water channel. The concerned gram panchayats have, in this connection, passed resolutions, the copies where have been placed on record as annexures P3 to P8; (3) the impugned notification has been issued at the behest of respondent No. 4, Shri H.S. Brar, Chief Minister of the State of Punjab just to appease the voters of parliamentary constituency from which his daughter contested the election. The impugned notification is, thus, vitiated on the grounds of mala fide and extraneous considerations.

3. Notice of motion was issued to the respondents. Written statement has been filed on behalf of respondents No. 1 to 4 by Shri G.S. Brar, Engineer Canals, Irrigation Works, Punjab, Chandigarh. It has been categorically denied that the impugned notification has been issued with mala fide intentions and with extraneous considerations. It has been alleged further that the demand for construction of the link channel is quite old and the residents of the area were not getting their share of water from the existing 2L Minor of Mudki Disty. The Zamindars of the villages Bura Guzzar, Akelgarh, Janisar, Chak Attari (Sadarwala), Fattanwala and Jassiana were representing for the construction of such channel for the last so many years. The last such request was received through the then State Minister Irrigation (Shri J.S. Kang) on 11.2.1995 who directed for taking necessary action vide order annexure R1. Thereafter, the survey work was undertaken and the same was completed and Feasibility Report was received by respondent No. 2, Chief Engineer, Irrigation Works. After the proposal was approved as being economically and technically sound this was followed by the submission of the project estimate submitted to the Government on 22.9.1995. The Punjab Government approved the project and issued on 8.1.1996, vide annexure R1. The approved project fulfils the demand of the tail irrigators of 2L Minor aforesaid and reduces the amount of the channel from its head (off take point) to its tail (end point) by 21 km. besides enhanced capacity of 15% as approved by the Punjab Government vide memo No. 1.15.92 IW(6)/9648 dated 21.7.1992, vide annexure R4. It was categorically denied that respondent No. 4 i.e. Chief Minister Punjab conceded the demand during the election period. The allegations to the contrary made in the writ petition were denied and it has been contended that the averments made in the writ petition in regard to the mala fides of respondent No. 4 is baseless and a sheer misuse and abuse of the process of the Court for ulterior motives. Urgency provisions as contained in Section 17 of the Act have been justified. It was mentioned that more than 30% of the work against the project estimate which will derive benefit on the construction of the link channel has already been completed at the cost of Rs. 200 lacs. The provisions of Section 17 of the Act were invoked in order to complete the balance work of the approved scheme by completing the link channel in the earliest possible time and the same was done in the public interest and for the benefit of the farmers. The emergency powers under the Act have not been misused or abused. It was further contended that the possession of land in question will be taken after the payment of compensation to the landowners. The Land Acquisition Officer, Patiala has already prepared the Award

and submitted to the State Government for its approval and necessary funds for the payment of Award compensation have already been palced at the disposal of the Land Acquisition Officer. The compensation will be paid as soon as the award is announced. It was further alleged that neither undue haste has been made for invoking provisions of Section 17 of Land Acquisition Act nor the demand was considered during the Parliamentary Election Campaign by respondent No. 4. The impugned notification dated 22.2.1996 was issued after the completion of the formalities which were done upto 8.1.1996.

4. We have heard the learned counsel for the petitioners and learned D.A.G. Punjab for the respondents.

5. Learned counsel for the petitioners argued that the respondents could not invoke the provisions of Section 17 of the Act and deprive the petitioners from the benefit of the provisions of Section 5A of the Act. He placed reliance on the judgment of the Hon"ble Supreme Court in the case of Narayan Govind Gavate etc. v. State of Maharashtra and others, A.I.R. 1977 S.C. 183 where certain lands were sought to be acquired and the public purpose indicated in the notification was the development of the area for industrial and residential purposes. The apex Court considered the provisions of Section 17 of the Act and held that the purpose of Section 17(4) of the Act is, obviously, not merely to confine action under it to waste and arable land but also to situations in which an enquiry under Section 5A will serve no useful purpose, or for some overriding reason, it should be dispensed with. It was held that the mind of the Officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under Section 5A of the Act should be eliminated. It is not just the existence of the urgency but the need to dispense with an enquiry under Section 5A which has to be considered. It was further held that it offers no difficulty in applying Section 17(4) of the Act in public interest.

6. Learned counsel for the petitioners cited a Full Bench decision of this court, reported in the Printers House Private Ltd. v. Mistri Lal Dalip Singh and others, A.I.R. 1970 Punjab & Haryana page 1. The Full Bench of this Court held that the opinion of the State Government while invoking the urgency provisions contained in Section 17(4) of the Act, is justiciable if it can be shown that the State Government never applied its mind to the matter or that its action is mala fide.

7. Learned counsel for the petitioners relied on the judgment of the Division Bench of Orissa High Court reported in Chandramani Sahu and others v. State of Orissa and others, A.I.R. 1991 Orissa 205 holding that the emergency powers under Section 17 of the Act can be resorted to only in extraordinary circumstances and failure to establish existence of urgency as well as need to dispense with the procedure under Section 5A is fatal.

8. On the other hand, learned D.A.G. for the respondents cited the judgment of the apex Court in the case of Union of India and others v. Shri Ghanshyarn Dass

Kedia and others, 1996(1) Rent Law Reporter 274. In that case, the apex Court held that it is not necessary that the notification should specifically recite the nature of the urgency. It is enough if the record discloses the consideration by the Government on urgency for taking action under Sections 17(1) and 17(2) of the Act. Thus, it is the subjective satisfaction of the Government based on material on record and the opinion of the Government is entitled to great weight. The Hon"ble Supreme Court observed as under :

" The main question canvassed before the Division Bench in W.P. Nos. 3084/87 was that the Government was not justified in invoking S. 17(1) read with S. 17(4) of Land Acquisition Act, 1894 (for short "the Act") dispensing with the enquiry under Section 5A. The High Court following its earlier decision has quashed the notification on the ground that the notification did not recite the nature of the urgency. Planned Development of Delhi is not urgent and, therefore, the exercise of the power under Section 17(4) was illegal. We do not find that the view taken by the High Court is legal and correct. In *Aflatoon & Ors. v. Lt. Governor of Delhi & Ors.*, (1975)1 SCR 802, the Constitution Bench of this Court had upheld the exercise of power under S. 17(4) dispensing the enquiry under S. 5A. It was for planned development of Delhi which would take long time for development. Yet this court upheld the exercise of the power of urgency. It is subjective satisfaction of the Government based on the material on record. The High Court is not a court of appeal over subjective satisfaction and the opinion of the Government is entitled to great weight. Therefore, it cannot be said that the notification should specifically recite the nature of the urgency. It is enough, if the record discloses the consideration by the Government on urgency for taking action under Sections 17(1) and (2)."

9. The case of *U.O.I. v. Ghanshyam Dass Kedia* (supra) was followed by the Division Bench of this Court in the case of *Tara Singh and others v. State of Punjab and others*, (19962)113 P.L.R. 766 and it was held that it is, thus, settled that the opinion of the State Government cannot be challenged in a Court of law if the State Government has applied its mind to a question of urgency or the action of the State Government invoking the urgency provisions is not mala fide. So far as the Division Bench judgment of the Orissa High Court in the case of *Chandramani Sahu and others v. State of Orissa and others* (supra) is concerned, it was decided prior to the decision of the case of *Union of India v. Ghanshyam Dass Kedia and others* (supra) by the Apex Court.

10. In the instant case, the stand of the respondents is categorical that the construction of the channel was an old demand of the farmers of the area and it was in the public interest that the land was sought to be acquired, the necessary steps had already been undertaken much prior to the declaration of the parliamentary elections. It was specifically mentioned in the written statement that the scheme for construction of the channel was not conceded after the parliamentary elections were notified to be held. In view of the facts mentioned in the written statement, the respondents invoked the emergency provisions

under Section 17(4) of the Act after the application of mind and the same was not turned in undue haste. The action of the respondents cannot be held to be mala fide and for extraneous considerations. The averments made in the written statement have not been controverted by the petitioners and there is no material placed before us to show mala fides on the part of the respondents and particularly by respondent No.4 the Chief Minister of State of Punjab.

11. In view of the facts stated in para (1) of the preliminary submissions, the scheme for the construction of the link channel had been undertaken and approved by the Government on 8.1.1996, whereas the election of Parliament was announced on 19.3.1996 and the elections were held on 27.4.1996. That being so, the action of the respondents cannot be held to be mala fide and for extraneous considerations. In the case of *Chameli Singh v. State of U.P.*, 1996(2) SCC 549 it was held by the Apex Court that the opinion of urgency formed by the appropriate Government to take immediate possession is subjective conclusion based on the material before it and it is entitled to great weight unless it is vitiated by mala fides or colourable exercise of power. In the case of *Union of India v. Shri Ghanshayam Dass Kedia* (supra) it has been reiterated by the Apex Court that the High Court is not a Court of appeal over subjective satisfaction and the opinion of the Government is entitled to great weight.

12. In view of the foregoing discussion, we find no merit in the writ petition. The writ petition is dismissed.