

(1971) 04 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2255 of 1966

Hari Chand Bishna Ram and Another	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 30-04-1971

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 6(1), 7

Citation : AIR 1972 P&H 25

Hon'ble Judges : Ranjit Singh Sarkaria, J

Bench : Single Bench

Advocate : R.L. Aggarwal, for the Appellant; M.S. Sandhu, Dy. A.G. and D.D. Jain, for the Respondent

Judgement

1. This is a writ petition, under Articles 226 and 227 of the Constitution, for impugning notifications dated June 11, 1953, issued u/s 4(1) and notification, dated April 3, 1957, u/s 6 of the Land Acquisition Act, 1894(hereinafter referred to as the "Act"), and the Award, dated May 29, 1965. Notification u/s 4(1) of the Act was also coupled with a direction u/s 17 that action would be taken on urgency basis and the provisions of Section 5A of the Act would not apply.

2. The petitioners alleged that the land in dispute, measuring 32 Kanals and 11 Marlas, situated in the revenue estate of village Parowal, Tehsil Garhshankar, was evacuee property and subsequently after the coming into force of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, (hereinafter referred to as the "Rehabilitation Act") it was acquired by the Central Government u/s 12 of that Act. On June 11, 1953, a notification u/s 4 was published that the whole area of village Parowal was likely to be acquired by the Government as its expense for brick-kiln. On April 3, 1957, another notification u/s 6 was published that 4.07 acres of land in the village, shown in the map which could be inspected at the spot, had been acquired for brick-kiln. It was also stated in this notification that the Collector was being directed u/s 7 to take order of the acquisition of the said land. The land in dispute was by order No. 266/3-B, dated 27-7-1964,

allotted by the Government to one Sansara son of Arjan, and that the mutation was attested in the name of the allottee immediately thereafter.

A Sanad of allotment (Annexure "F") was also issued on July 27, 1964, in favour of the aforesaid allottee. Sansara allottee died and the mutations No. 1354, dated June 2, 1965, Nos. 1340, 1341 & 1354 all the three dated April 21, 1965, were sanctioned in favour of the deceased's daughter, Shrimati Dhan Devi. By a registered deed dated July 2, 1965, this Dhan Devi sold the land in dispute to the petitioners for a sum of Rupees 26,000/-. The vendees petitioners then applied to the Revenue Officer for attestation of the mutation in their favour on the basis of the sale. The revenue authorities not only refused to do so, but instead, attested mutation No. 1383, dated June 25, 1966, in favour of the State Government on the basis of an Award made by the Collector on May 29, 1965. The petitioners alleged that it was on June 25, 1966 that they for the first time, came to know that Punjab State had some interest in the land in dispute when the mutation was attested in favour of the State Government.

3. In their written-statement, the Respondent-State admitted that the land in dispute was evacuee property and had been acquired by the Central Government u/s 12 of the Rehabilitation Act. It was not denied that the land had been allotted in favour of Sansara. It was, however, averred that no mutation was sanctioned in favour of Sansara. It was further clarified that mutation No. 1383 was attested in favour of the Respondent-State after the announcement of the Collector's award, dated May 29, 1965. It was denied that the land was ever in the physical possession of Sansara. It was also stated that possession of the land was taken by the Government through Respondent No. 2, in 1953. It was denied that the department intended to transfer the land in dispute in favour of Respondent No. 4(Shri Hardit Singh Contractor). It was pleaded that notice u/s 9 was duly issued.

4. Respondent No. 4 in his separate Return averred that Sansara had died on October 5, 1963 and the Sanad allotment (Annexure "F") could not be issued in favour of a dead man. It was pleaded that the land in dispute has been further sold on May 1, 1967, by the petitioner in favour of Randhir Kaur. Respondent (No. 4) also pleaded that he had paid the price for this land to the Respondent-State.

5. A preliminary objection has been raised by the learned counsel for the Respondents that the petitioners had no locus standi to maintain this petition inasmuch as Sansara, under whom they claim, came into the picture only after the publication of the declaration u/s 6 of the Act.

6. It is true that, except in cases of quo warranto and habeas corpus, the existence of a legal right inhering in the petitioner is the foundation of the writ jurisdiction of the Court. The petitioners, however, stand in the shoes of Sansara son of Arjan in whose favour the land in dispute had been allotted (vide Annexure "F", copy of Sanad of allotment) by the Central Government on July 27, 1964, that is, long before the Collector's award which was made on May 29,

1965. It cannot, therefore, be said that the petitioners had no personal interest or right in the disputed land. The preliminary objection is, therefore overruled.

7. The first contention of the learned counsel for the petitioners is that the notification issued u/s 4 of the Act was void and ineffective inasmuch as the land and the locality were not sufficiently indicated therein to enable the person, whose land was going to be acquired, to prefer objections. Failure to set out these necessary particulars--argues the counsel--was fatal to all the subsequent proceedings. In support of his contention, counsel has relied upon two decisions of the Supreme Court reported as: Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others, and Tharoo Mal Vs. Puran Chand Pandey and Others, .

It appears to me that there is force in this contention. In Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others, *ibid* in the notification u/s 4, the only information given was that some parts of Khasra No. 2030 belonging to the owners were required. There was no evidence on the record that the entire area of Khasra No. 2030 was intended to be acquired. Their Lordships, therefore, held that notification did not give due notice to the owners that their lands were intended to be notified for acquisition. Their Lordships also observed that the pleas raised by the petitioners about these infirmities in the notifications and the proceedings for compulsory acquisition were serious.

8. In Tharoo Mal Vs. Puran Chand Pandey and Others, *ibid* the only description of the locality of the land given, in the notification u/s 4, was that the land measured 105 acres and it was situated in Mauza Gokal Nagri, Pargana Bilaspur of District Rampur. There was a foot-note showing that "the plan of the land may be inspected in the office of the Collector Rampur." Their Lordships observed:

"Section 4 does not require that the identity of the lands which may ultimately be acquired should be specified but it enjoins upon the Government the duty to specify the locality in which the land is needed. In the instant cases the notifications suffer from a very serious defect in that the locality where the lands were needed was not specified. The notification merely showed that lands mentioned in the schedule were needed. The schedule in its turn though it contained the heading District, Pargana Mauza and approximate area, gave no particulars of the same and all that was mentioned by way of a note was that the plan of the land might be inspected in the office of the Collector of Rampur. As no details were given, the only indication about the locality of the lands was possibly the District of Rampur inasmuch as the plan of the land was to be found in the office of the Collector of the same district. Certainly the Act did not intend that all the persons owning land in a district should rush to the Collector's office to find out whether his lands were covered by the notification."

(The note appended to the AIR Issue of April, 1971, says that the Supreme Court has reviewed its judgment in Tharoo Mal Vs. Puran Chand Pandey and Others, but despite efforts, no copy of the reviewed judgment has been placed for my

perusal).

9. A Full Bench of the Allahabad High Court in the case reported as: Bahori Lal Vs. Land Acquisition Officer and Others, has held that sufficient particulars of the locality in relation to the land intended to be acquired, should be set out in the notification u/s 4(1) of the Act to enable all the persons concerned to know that their land is being acquired.

10. In the case before me, no specific description of the locality has been set out. The only description, given in the notification u/s 4(1), is that the land likely to be acquired for the brick-klin is in village Parowal, Tehsil Garhshankar, district Hoshiarpur. No field Nos. or boundaries of the land or locality are given under the column captioned "Area" where it is written "whole area". Then there is a note which reads: "Details of the land at site be given in such a manner that it be possible to ascertain it that in which village the land is situated." This note shows that even the authority issuing this notification was not sure as to whether the land likely to be acquired was situated in the revenue estate of village Parowal or any other village. It further shows that no demarcation at site had been done or plan drawn up. The notification is vague and nebulous in the extreme.

11. It is well settled that any notification u/s 4(1) of the Act which is the first step towards depriving a man of his property, must be strictly construed and courts ought not to tolerate any lapse on the part of the acquiring authority in the issue of such notification if it be of a serious nature. The issue of a valid notification under sub-section (1) of Section 4 is a condition precedent to the exercise of any further power under the Act and a notification which does not comply with the essential requirements of that provision of law must be held to be bad. (See Smt. Somavanti and Others Vs. The State of Punjab and Others,). The mere fact that in the impugned notification u/s 6(1) the particulars of the land are set out, cannot cure the defect in the basic notification u/s 4(1) of the Act.

12. In Tharoo Mal Vs. Puran Chand Pandey and Others, it was further held that the defect in the original notification u/s 4(1) could not be cured or glossed over by reason of the fact that the petitioners went to Court after the issue of the notification u/s 6(1). It appears to me that because of this inherent and substantial defect in the notification u/s 4(1), the entire acquisition proceedings founded on it must be treated as bad in law.

13. The second contention of the learned counsel for the petitioners is, that since the land in dispute, which was evacuee property in 1953, had been acquired by publication of a notification under sub-section (1) of Section 12 of the Rehabilitation Act before the publication of the declaration u/s 6 of the Act, it could not be legally acquired by the State Government under the provisions of the Act. Sub-section (2) of Section 12 of the Rehabilitation Act says that on the publication of a notification under sub-section (1), the right, title and interest of any evacuee in the evacuee property specified in the notification shall be

extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances. Thus immediately before the date of publication of the declaration (dated 3-4-1957) u/s 6 of the Act the totality of the rights in the land in dispute were owned by the Central Government and no other person had any title or interest in it. In these circumstances, I think that the provisions of the Act could not be validly invoked by the State Government to acquire this property belonging solely to the Central Government or vice versa. For this reason also the declaration u/s 6 of the Act was invalid and ineffective.

14. In view of the above findings, it is not necessary to go into the remaining points canvassed by the learned counsel for the petitioners. Once it is found that the notification u/s 4(1) of the Act, suffering as it does from a fatal defect, is null and void, the entire acquisition proceedings founded on it would automatically be deemed to be invalid and non est. I, therefore, allow this writ-petition and quash the impugned notifications dated 11-6-1953 and 3-4-1957 and the Collector's Award (dated 29-5-1965). The Respondents shall pay the costs of the petitioners, Counsels's fee Rs.100/-.

15. Petition allowed.