
(1957) 03 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : F.A.F. Order No. 158 of 1954

Harindar Singh

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 26-03-1957

Acts Referred:

East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948 — Section 5
Punjab General Clauses Act, 1898 — Section 22
Punjab Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 23, 25, 8

Citation : AIR 1957 P&H 209

Hon'ble Judges : Bhandari, C.J;Gurnam Singh, J;Chopra, J

Bench : Full Bench

Advocate : K.C. Puri and Pratap Singh, for the Appellant; S.D. Bahri, for the Respondent

Judgement

Bhandari, C.J.—This appeal raises a question of some importance, namely whether compensation in respect of property acquired under the provisions of the East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948, should be paid in accordance with the provisions of the Land Acquisition Act, 1894 or under the Immovable Property Act, 1953.

2. On 23rd February 1951 the State Government issued a notification under the provisions of the East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948, requisitioning a plot of land belonging to His Highness the Raja of Faridkot for rehabilitating the owners of land who had been ousted from Chandigarh. Government took possession of the property on 22nd March 1951 and appointed the District Judge of Ambala as an arbitrator on 29th November, 1952.

The arbitrator gave his award on 30th August, 1954 and declared that the owner was entitled to a sum of Rs. 1,74,224/5/- by way of compensation. Two appeals have been preferred from this award, one by the owner of the property in which

he claims a sum of Rs. 7,43,855/13/3 and the other by the State Government in which it is stated that the maximum amount to which the owner is entitled is Rs. 1,12,013/1/6.

3. The East Punjab Requisitioning of Immovable Property (Temporary Powers) Act of 1948 which came into force on 24th November, 1948 declares that in determining the amount of compensation to be awarded for land acquired under the Act the arbitrator shall have regard to the principles set out in Section 23 of the Land Acquisition Act, 1894.

This Act was repealed by the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953, which came into force on 15th April 1953 and which declares that in determining the amount of compensation regard shall be had only to the principles embodied in Section 8 of the Act of 1953. A person whose property is acquired under the provisions of the Act of 1948 obtains a much higher compensation than a person whose property is acquired under the provisions of the later Act.

4. Mr. Pratap Singh, who appears for the owners, contends that as soon as the property belonging to his client was acquired by the State Government he came to acquire a vested right to the payment of compensation in accordance with the provisions of the Act of 1948. If therefore the Act of 1948 was later repealed by the Act of 1953, the rights of his client to obtain compensation in accordance with the provisions of the Act of 1894 and the Act of 1948 remained intact and could not be taken away by the provisions of the Act of 1953.

Our attention was invited to a number of decisions which lay down the proposition that a vested right cannot be taken away unless the Legislature manifests its intention of doing so expressly or by necessary implication *Gordhan Das v. Governor-General in Council* AIR 1952 P&H 103 (FB) (A), and to decision of the Federal Court in which it was held that a right to continue a duly instituted suit is in the nature of a vested right and cannot be taken away except by a clear indication of intention to that effect, AIR 1943 24 (Federal Court)

5. The question which arises and which is by no means free from difficulty is whether the rights which came in vest in the Raja of Faridkot in consequence of his land having been acquired under the provisions of the Act of 1948 had been taken away expressly or by necessary implication by the repeal of the Act of 1948.

6. There can be little doubt that compensation in respect of property which is requisitioned under the Act of 1894 or under the Act of 1948 must be paid in accordance with the principles set out in the Act of 1953. This is clear from the language of Sections 8 and 23 of the Statute. Section 8 declares that where any property is requisitioned or acquired under this Act, there shall be given compensation which shall be determined in the manner and in accordance with the principles set out in the body of the section.

Section 23 declares that all immovable property which purports to have been requisitioned by the State Government for any public purpose under any law in force prior to the commencement of this Act and which immediately before such commencement was used or occupied by the State Government or by any officer or authority subordinate to that Government shall, as from the commencement of this Act, be deemed to be property duly requisitioned u/s 3 of this Act. If all immovable property requisitioned under the Act of 1894 or the Act of 1948 is to be deemed to be property requisitioned u/s 3 of the Act of 1953, it is obvious that compensation payable in respect therefore must be determined in accordance with the provisions of Section 8 of the said Act.

7. But what are the principles which regulate the payment of compensation in respect of property which is acquired under the Act of 1894 or the Act of 1948. The Act of 1953 does not appear to furnish a clear answer to this question. Section 8 does undoubtedly declare that compensation for property requisitioned or acquired "under this Act" (that is the Act of 1953) is to be determined in the manner and in accordance with the principles set out in the body of the section, but it does not appear to indicate equally clearly whether compensation for property requisitioned or acquired under the earlier Acts is to be determined under the provisions of this Act or under the provisions of the Act of 1894. Section 23 of the Act of 1953 is in the following terms :

"23 (1) All immovable property which purport's to have been requisitioned by the State Government for any public purpose, under any law in force prior to the commencement of this Act, and which, immediately before such commencement, was used or occupied by the State Government or by an officer or authority subordinate to that Government shall, as from the commencement of this Act, be deemed to be property duly requisitioned u/s 3 of this Act, and every such requisition shall, notwithstanding any judgment, decree or order of any Court, be deemed always to have been valid as if this Act had been in force on and from the date of the requisition and the requisition had been duly made by a competent authority under this Act, and all the provisions of this Act shall apply accordingly :

Provided that all agreements and awards for the payment of compensation in respect of any such property for any period of requisition before the commencement of this Act - and in force immediately before such commencement shall be valid and shall be deemed always to have been valid and shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period of requisition after such commencement.

2. Every acquisition of immovable property purporting to have been made before the commencement of this Act by the State Government for any public purpose, under any enactment for the time being in force in the State and which, immediately before such commencement was used or occupied by the State Government or by an officer or authority subordinate to that Government shall, notwithstanding any defect in, or invalidity of, the enactment or order under

which the acquisition was made, be deemed for all purposes to have been validly made as if the provisions of the said enactment or order had been included and enacted in this section and this section had been in force on and from the date of the acquisition."

Sub-section (1) of Section 23 which deals with requisitioned property presents no difficulty whatsoever for the language which the Legislature has chosen to employ makes it "quite clear that it was designed to secure two different objects namely (1) to declare that property requisitioned under the Acts of 1894 and 1948 shall be deemed to be property requisitioned u/s 8 of the Act of 1953 and consequently that compensation payable in respect of such requisition shall be determined in accordance with the principles set out in Section 8 and (2) to validate requisitions of immovable property made under the Acts of 1894 and 1948. This conclusion is fully supported by the provisions of Sub-section (2) of Section 23 of the Act of 1953 which runs as follows :

"25. (2) For the removal of doubts, it is hereby declared that any property which immediately before such repeal was subject to requisition under the provisions of either of the said Acts, shall, on the commencement of this Act, be deemed to be property requisitioned u/s 3 of this Act, and all the provisions of this Act shall apply accordingly.

* * *

Mr. Pratap Singh contends that the Act of 1953 was enacted with the object of providing for the requisitioning or acquisition of immovable property and for validating certain orders which had been issued under the Act of 1948 and that the Legislature never intended expressly or by necessary implication that compensation in respect of properties acquired under the Act of 1894 or 1948 was to be determined in accordance with the provisions of the Act of 1953 and not in accordance with the provisions of the Act of 1894. Mr. Bahri on the other hand submits that the intention was not only to validate the orders which had been passed under the earlier Acts but also to declare that compensation for properties requisitioned or acquired was to be made in accordance with the principles laid down in the Act of 1953.

8. As a doubt has arisen in regard to the intention of the Legislature and as this doubt is likely to arise in a number of other cases, I am of the opinion that the following question should be referred for decision to a larger Bench, namely :

"Whether in the circumstances of this case compensation for acquisition of property should be paid in accordance with the principles laid down in the East Punjab Requisitioning of Immovable Property (Temporary Powers) Act 1948, or in accordance with the principles set out in the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953?"

Bishan Narain, J.

9. I agree.

Bhandari, C.J.

10. This reference raises the question whether a person whose property is acquired under the provisions of the East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948, is at liberty to claim compensation in accordance with the provisions of the Land Acquisition Act, 1894.

11. On 23rd February 1951 the State Government issued a notification under the provisions of the East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948 acquiring, a plot of land belonging to the Raja of Faddkot for rehabilitating the owners of land who had been ousted from Chandigarh. Government took possession of the property on 22nd March 1951 and appointed the District Judge of Ambala as an arbitrator on 29th November 1952. The arbitrator gave his award on 30th August 1954 and declared that the owner was entitled to a sum of Rs. 1,74,224/5/- by way of compensation.

Two appeals were later preferred from this award, one by the owner of the property in which he complained that the value of his land had been under-assessed and that he is entitled to a sum of Rs. 7,43,885/13/3 and the other by the State Government in which it is urged that the value of the land has been over-estimated and that the owner is not entitled to anything more than Rs. 1,12,013/. 1/6.

12. When these appeals came up for hearing before a Division Bench of this Court a question arose whether compensation should be paid in accordance with the provisions of the Act under which the land was acquired or under the provisions of the Punjab Requisitioning of Immovable Property (Amendment and Validation) Act of 1953. The Division Bench were in some doubt as to the answer that should be given to this question and they have propounded the following question for decision by a larger Bench :

"Whether in the circumstances of this case compensation for acquisition of property should be paid in accordance with the principles laid down in the East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948, or in accordance with the principles set out in the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953?"

13. The East Punjab Requisitioning of Immovable Property (Temporary Powers) Act of 1948 which came into force on 24th November 1948 empowered the State Government to requisition or to acquire any immovable property for any purpose and to pay compensation in respect thereof in accordance with the principles set out in Sub-section (1) of Section 23 of the Land Acquisition Act, 1894. A Division Bench of this Court presided over by Weston C. J., expressed the view that a provision of law which empowers the State to acquire immovable property for a purpose other than public purpose contravenes the provisions of the Constitution and that all orders of requisition and acquisition issued under the provisions of the said Act were void and of no effect.

It was essential in the public interest to validate all such orders and on 3-8-1951 the President promulgated the Punjab Immovable Property (Amendment and Validation) Ordinance, 1951. This Ordinance was later replaced by an Act of the same name which declared that every requisition or acquisition of immovable property purporting to have been made before the commencement of Act of 1951 shall, unless the contrary be proved, be presumed to have been made for a public purpose and notwithstanding any judgment, decree or order of any Court every such requisition or acquisition shall be deemed to have been duly made. In the year 1953 the State Legislature considered it necessary to enact a remedial or curative measure known as the Punjab Requisitioning of Immovable Property (Amendment and Validation) Act 1953, which came into force on 15th April 1953.

The new Act defined the circumstances in which property can be acquired; it validated requisitions and acquisitions which had been made under the Act of 1948, and it declared that in determining the amount of compensation regard shall be had only to the principles embodied in Section 8 of the Act of 1953. A person whose property is acquired under the provisions of the Act of 1948 obtains a much higher compensation than a person whose property is acquired under the provisions of the later Act,

14. A curative or remedial measure is necessarily retrospective in character and may be enacted to cure or validate errors or irregularities in legal or administrative proceedings. A curative Act cannot however validate a prior unconstitutional statute, for the Legislature has no power to validate by a subsequent statute an act or proceeding which could not be constitutionally authorised in the first instance. If therefore the Constitution declares that no immovable property shall be acquired except for a public purpose & if a statute which authorises the acquisition of property for a purpose other than a public purpose is held to be unconstitutional it is not within the competence of the Legislature to declare by a curative or validating Act that the property which has been acquired for a purpose other than a public purpose was validly and lawfully acquired.

15. There can be little doubt that compensation in respect of property which is requisitioned under the Act of 1894 or under the Act of 1948 must be paid in accordance with the principles set out in the Act of 1953. This is clear from the language of Sections 8, 23 and 25 of the Statute. Section 8 provides that where any property is requisitioned or acquired under the Act of 1953 there shall be given compensation which shall be determined in the manner and in accordance with the principles set out in the body of the said section.

Section 23 enacts that all immovable property which purports to have been requisitioned by the State Government for any public purpose under any law in force prior to the commencement of this Act and which immediately before this commencement was used or occupied by the State Government or by an officer or authority "subordinate to that Government shall, as from the commencement of this Act, be deemed to be property duly requisitioned u/s 3 of this Act.

Sub-section (2) of Section 25 declares that any property which immediately before such repeal was subject to requisition under the Act of 1948 shall, on the commencement of this Act, be deemed to be property requisitioned u/s 3 of this Act, and all the provisions of this Act shall apply accordingly. If all the immovable property requisitioned under the Act of 1948 is to be deemed to be property requisitioned u/s 3 of the Act of 1953, it is obvious that compensation payable in respect thereof must be determined in accordance with the provisions of Section 8 of the said Act.

16. But what are the principles which regulate the payment of compensation in respect of property which is acquired under the Act of 1894 or the Act of 1948? The Act of 1953 does not appear to furnish a clear or a convincing answer. Section 8 does undoubtedly declare that compensation for property requisitioned or acquired under the Act of 1953 is to be determined in the manner and in accordance with the principles set out in the body of this section, but it does not appear to indicate equally clearly whether compensation for property which is acquired under the provisions of an earlier Act is to be determined under the provisions of this Act or under the provisions of the Act of 1894.

Section 23 of the Act of 1953 provides that property requisitioned under the Act of 1894 or the Act of 1948, shall be deemed to be property requisitioned u/s 3 of the Act of 1953, but it does not make a similar provision in respect of property acquired under the Act of 1894 or 1948. Even Section 25 of the Act of 1953 is reticent in regard to property which is acquired under the provisions of the earlier Acts. It carefully refrains from stating that all such property shall be deemed to be property acquired under the provisions of S, 3 of the Act of 1953.

17. The learned Advocate-General frankly admits that the Act of 1953 is a curative or a remedial measure, that it was enacted principally with the object of validating the unlawful orders which had been passed under the Act of 1948, that there is nothing in the Act of 1953 which would justify the Court in holding that compensation in respect of properties acquired under the Act of 1948 would be assessed and paid in accordance with the provisions of the Act of 1953 and that the right to payment of compensation is a vested right of which a person cannot be deprived unless the Legislature has made its intention plain either By the use of express language or by necessary implication.

He also admits that a proceeding in regard to payment of compensation was actually pending before an arbitrator at the time of the enactment of the Act of 1953. He relies exclusively on the provisions of Section 22 of the Punjab General Clauses Act, 1898, in support of his contention that compensation in respect of property acquired by Government under the Act of 1948 should be paid in accordance with the provisions of the Act of 1894 and not in accordance with the provisions of the Act of 1953. This section runs as follows:--

"22. Where any Punjab Act is repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any appointment,

notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act, shall, so far as it is not inconsistent with the provisions re-enacted continue in force, and be deemed to have been made or issued under the provisions so enacted, unless and until it is superseded by an appointment, notification, order, scheme, rule, form or bye-law, made or issued under the provisions so re-enacted."

18. Mr. Sikri contends that the expression "deemed to have been made or issued" under the Act of 1953 is equivalent to "shall be taken to have been made or issued" under the Act of 1953. It does not mean that the notification or order was actually issued under the Act of 1953 but merely that in the contemplation of law it was issued under the provisions of the said Act, for when an Act of Parliament says that a person is to be deemed to be in any particular capacity, that must be understood to mean that he is thereafter taken as actually the very person that he is deemed to be, *Wolton v. Gavin* (1850) 16 QB 48 at p. 81 (C).

If the notification of 1951 which was issued under the provisions of the Act of 1948 is to be taken to have been issued under the provisions of the Act of 1953, then, it is argued, compensation in respect of the property acquired by virtue of the said notification must be paid under the provisions of the Act of 1933. Our attention was invited prominently to certain observations of Lord Asquith of Bishopston in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* 1952 AC 109 (D), where his Lordship said:--

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it..... The statute says that you must imagine a certain state of affairs; it does not say that having done so you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

19. These observations were cited with approval by their Lordships of the Supreme Court in *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, in which it was held that when a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion.

Mr. Sikri accordingly contends that the intention of the Legislature appears to have been that all notifications of acquisition made under the Act of 1948 should be deemed to have been made under the Act of 1953. If the notification acquiring the land of the Raja must be deemed to have been issued under the Act of 1953, it is argued, compensation payable to the appellant must be paid in accordance with the principles enunciated in the Act of 1953.

20. This argument, plausible and convincing as it appears to be at first sight,

cannot in my opinion bear a moment's scrutiny. It appears to ignore certain basic facts and fundamental rules for construction of statutes. In the first place, it ignores the requirement that a notification issued under the repealing Act can continue in force only if it is not inconsistent with the provisions of the new Act. The Act of 1948 empowered Government to acquire property for any purpose whatsoever. The Act of 1953 confines this power within narrow limits, for Sub-section (3) of Section 7 of the Act of 1953 runs as follows:--

"7 (3). No property shall be acquired under this section except in the following circumstances, namely --

(a) where any works have, during the period of requisition, been constructed on, in or over, the property wholly or partially at the expense of the State Government and the Government decides that the value of, or the right to use, such works should be secured or preserved for the purposes of Government; or

(b) where the cost of restoring the property to its condition at the time of its requisition would, in the determination of the State Government, be excessive and the owner declines to accept release from requisition of the property without payment of compensation for so restoring the property".

21. The notification acquiring the land in the present case could not have been issued under the provisions of Section 7 reproduced above, for the learned Advocate-General was unable to show, that the property in question was acquired in the circumstances set out in the body of the section.

22. Secondly, the argument appears to ignore the fact that although the Constitution of India does not prohibit the passage of ex post facto laws which have the effect of disturbing or destroying vested rights, it is a fundamental rule of English Law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or is distinctly expressed and clearly and necessarily implied by the language used by the Legislature.

This is particularly so when a statute impairs vested rights or the legality of past transactions or the obligation of contract. Such rights cannot be taken away by implication. "In order to take away the right" observed Lord Watson in *Western Counties Rly. Co. v. Windsor & Annapolis Rly. Co.* (1882) 7 AC 178 at p. 189 (F), "it is not sufficient to show that the thing sanctioned by the Act, if done, will of sheer physical necessity put an end to the right, it must also be shown that the Legislature have authorised the thing to be done at all events and irrespective of its possible interference with existing rights."

A right to compensation for property actually taken for public use is clearly a vested right. As soon as the land belonging to the Raja was acquired under the Act of 1948 a right came to vest in the owner to receive compensation in accordance with the provisions of the Act of 1948. The broad general language which the Legislature has chosen to employ in Section 22 does not in my opinion

clearly and distinctly authorise that the owner should be divested of the rights vested in him by the Act of 1948. This section was not designed to disturb intervening rights or to operate on existing rights or to impair, disturb or destroy absolute vested rights.

23. Thirdly, the argument does not appear to attach sufficient emphasis on the facts that the pra-perty which is the subject-matter of this case was acquired under the Act of 1948, that an arbitrator was appointed on the 29th November 1952, and that the Act of 1953 came into force while those proceedings were pending before the arbitrator. There is nothing in the Act of 1953 which can be construed to imply that it was to affect anv suits or other legal proceedings which were actually pending when it came into force. Nor is there anything in Section 22 which can be construed to impair vested rights in pending litigation,

It is well known that a right to continue a duly instituted suit is a vested right, that it cannot be taken away except by a clear indication to that effect, AIR 1943 24 (Federal Court) and that where a statute is passed while an action is pending strong words are necessary to alter the vested rights of any litigant as they stood at the time of the commencement of the action, AIR 1952 Punj 103 (FB) at p. 105 (A).

It is equally clear that when the law is altered during the pendency of an action the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights (Maxwell on Interpretation of Statutes, p. 221). The Court is not to see whether there is an express provision permitting the continuance of pending proceedings but whether there is any clear indication against the con-tinuanee of pending proceedings to their normal termination, AIR 1943 24 (Federal Court)

24. For these reasons I am of the opinion that in the facts and circumstances of the present case the compensation payable to the appellant must be paid in accordance, with the provisions of the Act of 1948 and not in accordance with the provisions of the Act of 1953. Let an appropriate answer be returned to the question which has been referred to us.

G.L. Chopra, J.

25. I agree.

Gurnam Singh, J.

26. I agree.