
(1992) 02 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 15201 of 1991 and C.M. No. 1007 of 1992

Harpal Singh and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 14-02-1992

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 5, 5(2)
Punjab Municipal Act, 1911 — Section 58

Citation : AIR 1992 P&H 314 : (1994) 1 ILR (P&H) 413 : (1992) 102 PLR 67

Hon'ble Judges : V.K. Bali, J;A.L. Bahri, J

Bench : Division Bench

Advocate : Sarjit Singh and Jagdev Singh, for the Appellant; T.S. Doabia M.C. Beri, DAG and I.P.S. Doabia, for the Respondent

Judgement

A.L. Bahri, J.—This order will dispose of 4 writ petitions Nos. 15201, 17433, 17491 and 17748 of 1991, as challenge in these writ petitions is to the same notification issued under Ss. 4 and 6 of the Land Acquisition Act Annexure P 1 attached with C.W.P. No. 15201 of 1991. Board facts are taken from this writ petition.

2. Vide notifications dated August 5, 1991, August 13, 1991, published in Punjab Gazette (Extra) on August 19, 1991, issued under Sec. 4 of the Land Acquisition Act (hereinafter called "the Act") the State intended to acquire 66.60 acres of land in revenue estates of Mughal Majra and Nasrali, Tahsil Nabja, District Patiala, for a public purpose i.e. for the construction of Truck-stand (Gobindgarh.) Resort to provision of S. 17(2) of the Act was had as the land was urgently needed for the aforesaid public purpose which in the opinion of the Government was of urgent and emergent nature as there was great nuisance in city of Gobindgarh as trucks used to be parked in the streets along the G.T. Road, and there was hinderance to the traffic of the town. Provision of S. 5A of the Act were not to be made applicable. Simultaneously notification u/s 6 of the Act was issued, Assistant Collector/Sub-Divisional Magistrate was directed to take order

for the acquisition of the land and to proceed to take possession of land measuring 27.61 Acres, specific khasra number being described in the notification, aforesaid. The land was acquired by the State Government at the instance of the Municipal Committee, Gobindgarh. The land was required by the Municipal Committee and reference was made by the Municipal Committee to the State Government under S. 58 of the Municipal Act.

3. The petitioners are landowners in all these writ petitions of the two revenue estates of the, villages aforesaid. Since 1985 the Municipal Committee, Amloh was considering to acquire the land for the Truck Union. The matter was also under consideration, of the State Government. It was in 1991 that at the instance: of the Municipal Committee, Gobindgarh, the State Government issued the impugned notifications. The petitioners were issued notices under Sec. 9 of the Act on August 27, 1991. They were required to appear before the Land Acquisition Collector on August 30, 1991. Clear notice of 15 days as required under the law was not given to the petitioners to file objections. The substance of the notification was not published in the locality in accordance with the provisions of the Act. The petitioners claim to be small land-owners and solely dependent for their livelihood on agriculture. The acquisition proceedings were challenged inter alia on the grounds that in the impugned notification reference was made to Sec. 58 of the Land Acquisition Act, and no such provision existed for the purpose. State Government did not apply its mind while issuing the notification. On the facts of the case provisions of S. 17 could not be made applicable. The matter of consideration of truck-stand was under consideration of the State Government for more than a decade. The State could afford 30 days for giving notice to the landowners to raise objections as required under the Act. The land was required for a purpose which was not covered under S. 58 of the Municipal Act.

4. State of Punjab filed written statement on behalf of respondents Nos. 1 and 2. Municipal Committee-respondent No. 3 filed separate written statement. These respondents strongly contested the writ petition controverting the allegations of the petitioners. Municipal Committee further took some preliminary objections asserting that notices under S. 9 of the Act were issued and served upon the land-owners which were valid. It was in response to the aforesaid notices that the petitioners surrendered possession of the land intended to be acquired without any protest on August 29, 1991. On merits, the stand of the respondent is that notification was duly published in the locality as well as in the newspapers. The land-owners accepted compensation for the standing crops without any protest and acquiesced in the acquisition proceedings. Now they cannot challenge the same. As the land was urgently required for the public purpose aforesaid, resort to the provision of S. 17(2) of the Act was proper. Since notices under S. 9 of the Act were served, the petitioners could file objections. After surrender of the possession the Municipal Committee has spent huge amount in developing the land. Additional affidavit of Sh. Ashok Kumar, Executive Officer of the Municipal Committee, Mandi Gobindgarh has been filed along with

C.M. No. 1007 of 1992. The same is allowed and the affidavit is taken on the record.

5. On perusal of the pleadings of the parties and the additional affidavit aforesaid the following facts stand established :--

i) That earlier for the truck-stand 66 Bighas 7 Biswas of land was purchased by the Municipal Committee vide resolution No. 155 that land was beyond municipal limits and ultimately the proposal to construct a truck-stand there was not approved. This was in 1983 and in 1985, the Municipal Committee decided that the land purchased was not suitable for truck-stand and there was no direct approach. It was subsequently that a committee consisting of Deputy Commissioner as Chairman and several others including officials from National Highway Division and Chief Agricultural Officer selected the new site for the truck-stand which is the site in dispute. It was on July 23, 1986 that effect was to be given to the report of the aforesaid committee. The Chief Town Planner on December 21, 1988 gave the necessary approval. The State Government gave approval on January 6, 1989. The Government also directed selling of the land which was earlier purchased by the Municipal Committee. The impugned notifications Annexures P.1 and P.2 were issued in August, 1991. After taking possession the Municipal Committee spent some amount for development and also deposited Rs. 47,00,000/- with the Collector for disbursement to the owners.

6. Learned Counsel for the petitioners while referring to S. 58 of the Municipal Act has argued that the State Government could not acquire land under provisions of the Land Acquisition Act for the Municipal Committee as the purpose of constructing truck-stand was not one of the functions of the Municipal Committee to be performed under the provisions of the Act. Section 58 of the Municipal Act reads as under:--

"58. Acquisition of land:-- When any land, whether within or without the limits of a municipality, is required for the purposes of this Act, the State Government may, at the request of the Committee, proceed to acquire it under the provisions of the Land Acquisition Act, 1894, and on payment by the Committee of the compensation awarded under that Act, and of any other charges incurred in acquiring the land, the land shall vest in the Committee.

Explanation:-- When any land is required for a new street or for the improvement of an existing street, the Committee may proceed to acquire, in addition to the land to be occupied by the street, the land necessary for the sites of the buildings to be erected on both sides of the street and such land shall be deemed to be required for the purposes of this Act."

A perusal of the aforesaid provision would show that land could be acquired for a new street or for improvement of the existing street. The word "street" as appearing in different provisions of the Punjab Municipal Act is to be read in the wider sense and not to be treated only as a lane. For the purposes of acquiring land for construction of road or street, the land could be acquired. The trucks are

to be parked on a road or its extension. The parking place attached to the road would be part of the road and cannot be treated something separate therefrom. The contention of learned Counsel for the petitioners in this respect, therefore, cannot be accepted. The State Government at the instance of the Municipal Committee could acquire land for the purposes of construction of truck stand, bus stand, cycle stand, rickshaw stand, tonga stand etc. in view of the provisions of S. 58 of the Punjab Municipal Act.

7. This is a case where the land in dispute is being acquired under the provisions of the Land Acquisition Act invoking urgency provisions contained in Sec. 17 of the Act taking away the right of the land-owners to raise objections to the acquisition as contemplated under S. 5(2) of the Act. Since the land-owners were to be deprived of their valuable right in the land it was expected of the State Government to strictly comply with the letters of the law. On behalf of the petitioners two-fold objections have been raised to the acquisition proceedings. Firstly that the notifications under Ss. 4 and 6 were issued simultaneously on the same day and the declaration of invoking urgency provision was required under the law to be taken after publication of the notification issued under S. 4 of the Act. Secondly the invoking of the urgency-provisions in the present case was arbitrary and uncalled for. If the State had taken a decade to decide to finalise the construction of truck stand it could have waited for a period of 30 days more which is required to be given to the owners to raise objections. After hearing counsel for the parties we are of the firm opinion that the writ petitions deserve to be allowed on these grounds. The Supreme Court in *State of Punjab and Another Vs. Gurdial Singh and Others*, , observed as under at page 323 : -

"It is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Arts. 14 (and 19), burke an enquiry under S. 17 of the Act."

It was further observed (para 16):

"Where the Government sought to acquire particular land for establishing a grain market, then gave it up and selected another piece of land but ultimately acquisition of the latter was declared mala fide by the High Court and seven years thereafter the Government again sought to acquire the same land under emergency powers under S. 17, it could not be said that the invoking of the section is justified."

Relying upon the aforesaid decision of the Supreme Court this Court also in *Kartar Singh v. The State of Haryana* 1986 PLJ 464, quashed the notification invoking urgency provisions under S. 17(4) of the Act, The land was sought to be acquired for constructing godowns for the Food Corporation of India which

purpose could not be said to be so pressing or urgent that the authorities could not even afford to hear the objections of the claimants in terms of S. 5A of the Act. The position in the present case is also similar that when the State had taken so long for deciding to set up truck stand on the site in dispute, it could not be said that it could not wait for another period of 30 days to enable land-owners to file objections under S. 5A of the Act.

8. Learned Counsel for the respondents have referred to two decisions of the Supreme Court *Smt. Somavanti and Others Vs. The State of Punjab and Others*, and *Babu Singh and Others Vs. Union of India (UOI) and Others*, , in support of their contentions that notifications under Ss. 4 and 6 could be issued and published simultaneously on the same day. It is not necessary to refer to these two cases in detail these cases have been distinguished by a later decision of the Apex Court in *State of Uttar Pradesh Ors. Vs. Radhey Shyam Nigam and Others*, , a decision after enforcement of the amended Act of 1984. Relevant observations from para 14 are noticed as under : --

"It is true that the expression "after the date of the publication of the notification" introduced in S. 4 can be explained away as making no change from the provisions of law by reading it along with the amendment made in S. 4 whereby in different situation in S. 4, the last date of publication of the notice has been determined as the date of the publication of the notification and similarly in S. 6 a date of the publication of the notice has been provided for. But the words "after the date of the publication of the notification" in sub-sec. (4) of S. 17 read simpliciter clearly indicate that the declaration under S. 6 had to be made after the publication of the notification meaning thereby subsequent to the date of the publication of the notification. It appears to us that there is nothing in the scheme of the Act which militates against such a construction. The fact that at times where emergency provisions are invoked emergent action may be taken but in such a situation in view of the state of law that was before it, the legislature has made a conscious change which cannot be explained away merely because this as a consequence of the changes in Ss. 4 and 6 of the Act.

In para 15 of the judgment it was observed while referring to introducing the words "after" before "date of publication of the notification" in sub-section (4) of S. 17 of the Act by the Amending Act of 1984, as under :--

"It is true that there were some changes giving the meaning of the date of the publication in S. 4 (1) and (2) as well as S. 6(2) of the Act. But for that, there was no need for the use of the expression "after the date". If that be the position, then we must accept the interpretation put upon the amended clause by the High Court in the judgment under appeal. It will, however, be open to the appellants to issue a fresh declaration under S. 6, if so advised, within the period contemplated in the proviso to S. 6(1) of the Act read with its first explanation."

9. Annexures P.1 and P.2 notification issued under Ss. 4 and 6 of the Act were simultaneously published in the Punjab Government Gazette (extra) (dated

August 19, 1991) though this notification purports to be dated August 13, 1991, the notification was actually signed by the Secretary on August 5, 1991. This shows that notifications under Ss. 4 and 6 were simultaneously prepared and the decision to have resort to the provisions of S. 17(4) of the Act was simultaneously taken and not after publication of the notification under S. 4 of the Act.

10. In the present case notice under S. 9 of the Act was issued to the land-owners on 27-8-1991 whereas possession was taken over on August 29, 1991. Clear fifteen days time as prescribed under S. 9 of the Act was not given. The Supreme Court in *Jethmull Bhojraj Vs. State of Bihar and Others*, , observed as under in this context (at page 1365):

"From the provisions of S. 17(1) it is plain that the Collector cannot take possession of the land in question unless the Government directs him to do so. The Government can direct him to do so only in cases of urgency. Even when the Government directs the Collector to take possession, he cannot do so until expiration of 15 days from the publication of a notice under S. 9(1). When there is no material on record to show that the Government had given to the Collector any direction under S. 17(1); nor is there any material to show that the lands in question had been taken possession of by the Collector under S. 17(1), the lands cannot be said to have vested in Government."

11. Learned counsel for the respondents have argued that the petitioners have approached this Court after undue delay and the writ petition should be dismissed on the ground of laches. The writ petition should have been filed within 30 days of the taking over of the possession as such time is given under S. 9 of the Act. After taking over possession, the Municipal Committee has spent huge amount to develop the land. This contention cannot be accepted. One of the writ petitions was filed in September, 1991. No fixed period for filing writ petition is prescribed. Normally when within 90 days of the accruing is of the cause, writ petition is filed, the petitioner is not required to explain delay. Merely by taking over possession the land is not vested in the State. It is only after payment of the compensation that it would lawfully vest in the State.

12. For the reasons recorded above, these writ petitions are allowed. Notification issued under S. 6 of the Act is quashed whereas declaration contained in notification issued under S. 4 of the Act resorting to the urgency provisions of S. 17(4) of the Act ignoring the procedure to be followed under S. 5A of the Act is also quashed. The remaining part of the notification under S. 4 of the Act which is in accordance with law is sustained. The petitioners are allowed 30 days time from today to file objections under S. 5A of the Act. There will be no order as to costs.

13. Petitions allowed.