

(1970) 09 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1926 of 1970

Jagdish Ram Sharma and Others

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 15-09-1970

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 9

Citation : AIR 1971 P&H 139

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Advocate : B.S. Chawla, for the Appellant; H.L. Soni, General, for the Respondent

Judgement

1. This writ petition at the instance of Jagdish Ram and others, residents of Anandhpur Sahib in District Ropar, is directed against the State of Punjab (respondent No. 1) and the Collector, Ropar (respondent No. 2) for the issuance of a writ of certiorari to quash the notifications (annexures "B" and "C" to this writ petition) and for the issuance of a writ of mandamus or any other appropriate writ, order or direction restraining the said respondents not to take possession of any part of the land detailed in Annexure "A". 2. It has been alleged by the petitioners in their writ petition that the Punjab Government issued notification No. 635312-HG-69 on 13-10-1969 u/s 4 of the Land Acquisition Act, 1894, hereinafter called the Act to the effect that land within municipal limits of Ananthpur Sahib together with some area outside it is needed by the Government at public expense for the purposes of various development schemes of Anandhpur Sahib. A copy of the said notification is annexed to the writ petition as Annexure "B". After the issuance of the said notification, the Punjab Government issued another notification u/s 6 of the Act, wherein the land proposed to be acquired was particularised by attaching a schedule mentioning the villages and the hadbast numbers as also the Khasra members. The Punjab Government in the said notification further invoked the emergency powers

vested in it u/s 17(2)(c) of the Act. A copy of the subsequent notification is annexed to the writ petition as annexure "C". Admittedly, in the notification issued u/s 4 of the Act, the Khasra members of the land intended to be acquired are not mentioned and merely the area expressed in acres is mentioned. It is further admitted on both sides that in the notification issued u/s 6 of the Act the names of the Municipal limits of the Anandhpur Sahib are omitted. The petitioners have, therefore, come to this Court by way of the present writ petition under Art. 226 of the Constitution challenging the vires of the notifications, annexures "B" and "C" and the legality of the subsequent proceedings leading to the finalisation of the award, as also the competency of the Government to take possession of the land comprised in Khasra Nos. 34 to 39 and 7/3 situated within the municipal limits of Anandhpur Sahib owned and possessed by the petitioners. 3. It is however, admitted on both sides that the petitioners did not prefer any objection u/s 5A of the Act, nor did they file any claim for compensation in response to notice issued u/s 9 of the Act. The petitioners case is that they never knew that their lands had been acquired, as the notification issued u/s 4 of the Act was extremely vague and mentioned no Khasra members, which fact may have enabled them to avail of the opportunity provided u/s 5A of the Act. The learned counsel for the petitioners submitted that the notification issued u/s 6 of the Act did not mention that any land within the municipal limits of Anandhpur Sahib had been acquired and so the question of their preferring any claim for compensation in response to a notice issued u/s 9 of the Act did not arise. 4. The respondent State in its return has merely mentioned that omission of mentioning the municipal limits of Anandhpur Sahib in the notification issued u/s 6 of the Act is by inadvertence and has further asserted that when both the notifications, annexures "B" and "C" and read together, they provide sufficient information regarding the land which has been acquired by the Government vide notifications, annexures "B" and "C" and so neither notification issued u/s 4 nor that issued u/s 6 of the Act is vague. 5. It may be mentioned here that these very notifications were under challenge in Civil Writs Nos. 584 and 585 of 1970 (Punj) which were decided on 22-5-1970. Suri, J., of this Court, before whom the said writ petitions came up for hearing, has held that there was no such emergency which could have necessitated the invoking of the provisions of Section 17(2)(c) of the Act. Regarding the vagueness of the notification issued u/s 4 of the Act (annexure "B" to the present writ petition), the learned Judge has observed as follows : "The notification (annexure "B" to the petition) u/s 4 in our case does not even give the public purpose clearly. It does not say that a road is going to be laid at any particular place beyond saying that land was needed for development schemes. There is no reference in this notification to any plans of the proposed road or development schemes. It is only mentioned that the entire land situated within the municipal limits of Anandhpur Sahib was needed and there was no mention of any Khasra numbers. The area of 210 acres mentioned in the notification could include thousands of houses built on small plots in the historical town of Anandhpur Sahib and it was not possible for the thousands of owners of the

small plots and houses to know, from this notification as to which of them were likely to be affected so that they may file objections u/s 5A. There was no reference to a plan and even if there had been such a vague reference to any plan it was not expected of thousands of owners of small plots and houses to rush to the Collector's Office to ascertain whether or not they were to move under S. 5A. On the analogy of the cases of Narinderjit Singh and Smt. Gunwant Kaur it could validly be argued by the learned counsel for the petitioners that the notification u/s 4 did not provide the necessary sine qua non for subsequent proceedings under the Act had it not been for the fact that objections u/s 5A had actually been filed within time by one of the petitioners in Civil Writ No. 584 of 1970 while the person at the spot who was managing the property on behalf of the petitioner in Civil Writ No. 585 of 1970 had appeared before the Collector on the appointed date and had come to a settlement " The learned Judge, as would be apparent from the perusal of the observations extracted above, did not strike down the notification issued u/s 4 of the Act on the ground of vagueness for the reason that, in fact, no prejudice had been caused to the petitioners in those writ petitions who had availed themselves of the opportunity u/s 5A of the Act and had lodged their objections and even if the notification was vague, no actual prejudice had been caused to the petitioners before the learned Judge. While in the case before me, admittedly the petitioners had not lodged any objections u/s 5A of the Act, nor there is material on the record that they in any manner participated in the subsequent proceedings leading to the finalisation of the award, consequent upon which the authorities concerned proceeded to take possession of the petitioner's lands. The notification issued u/s 4 of the Act, in my opinion, is therefore, as vague as it could be inasmuch as the area lying within the municipal limits of Anandhpur Sahib must be comprising of thousands of acres of land, vacant as well as inhabited, out of which merely 210 acres of land was intended to be acquired. This information is not at all sufficient to make any owner within the said municipal limits aware that his land is intended to be acquired. The omission of the names of the municipal limits of Anandhpur Sahib altogether from the notification issued u/s 4 of the Act not only intended to acquire lands within the municipal limits of Anandhpur Sahib, as will be clear from the said notification, but it further intended to acquire the lands of the other three villages, namely, Chak, Sihota and Lodhipur. The Khasra Numbers, which belong to the petitioners are mentioned in annexure "C" to be falling in the area of village Chak and nobody can dispute the fact that there are no such Khasra numbers in village Chak. Since it is open to the Government to acquire or not to acquire the whole of the area intended to be acquired by notification issued u/s 4 of the Act, so any reasonable man, after perusing the notification, in my opinion, will gather that the area falling within the municipal limits of Anandhpur Sahib had not been acquired by the Government. What is more some of the Khasra members in question also fall within the area of the village Lodhipur and so the mentioning of the Khasra numbers under the area of village Chak or under the area of village Lodhipur cannot give at all any information to a landowner having his land within the municipal limits of Anandhpur Sahib that his land has been

acquired and he will thus be within his right u/s 5A of the Act, nor to respond to any notice issued u/s 9 thereof. Since the notification issued u/s 4 of the Act did not provide the necessary sine quo non for subsequent proceedings under the Act, so the acquisition proceedings initiated by the said notification culminating in the award in question are absolutely illegal and without jurisdiction qua the petitioners and the same are struck down. 6. For the reasons stated above, I allow this writ petition with costs, quash the petitioners , annexures "B" and "C" to this writ petition and direct respondent No. 1 not to take possession of the lands owned by the petitioners within the municipal limits of Anandhpur Sahib and if the possession had already been taken, then to restore the same to the petitioners forthwith. 7. Petition allowed.