
(1994) 03 P&H CK 0078
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2707 of 1984

Jagjit Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-03-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 4, 6

Citation : (1994) 107 PLR 132

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : H.L. Sibal, M.L. Saggar and Jagjit Singh, P.C. Mehta and S.S. Saini, for the Appellant; S.S. Saron, D.A.G. and S.K. Bhanot, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—Yusaf and Ali sons of Badra owned certain land in Patiala which was erroneously declared as evacuee property. Some part of this land was subsequently restored to them and the other part could not be restored because in the meantime, the same was allotted to displaced persons. Alternate land out of the evacuee pool was offered to them in lieu of the remaining land which offer they accepted. As a result of this arrangement, land measuring 11-2st. acres in village Kullialwal and land measuring 32-1-1/4 st acres in village Jamalpur Awana, Teh. & Distt. Ludhiana was allotted to them. The rights in respect of both these allotments were given to them on 28.12.1969. Mutations to this effect were also sanctioned. In the present writ petition petitioners are the persons to whom Yusaf and Ali leased out and transferred the land situated in villages Kullialwal and Jamalpur Awana, Tehsil and District Ludhiana.

2. The State of Punjab vide its notification dated 25.1.1978 acquired 425 kanals 17 marlas of land for the purpose of constructing a new Central Jail at Ludhiana. Out of the acquired land, land measuring 116 kanals 15 marlas was the one which was originally allotted to Yusaf and Ali and was subsequently transferred in

favour of the petitioners who are transferees and lessees from Yusaf and Ali. Petitioners in this writ petition, are challenging the acquisition on the ground that on 28.12.1979, the State Government through the Joint Secretary to Government, Punjab, Revenue Department, issued directions to all the Deputy Commissioners in the State of Punjab vide letter No. 1478 LR (1) 26008 dated 28.12.1979 that in case possession of land acquired u/s 6 of the Land Acquisition Act (in short, the Act) was not taken within one year after the issuance of notification u/s 6 of the Act, the notification would be deemed to have lapsed. According to the petitioners, the Land Acquisition Authorities never took possession of the acquired land and the petitioners continue to be in possession thereof. In view of the instructions of the State Government, coupled with the fact that possession of the land had not been taken by the Authorities concerned notifications Under Sections 4 and 6 of the Act lapsed and became effective and void after the expiry of one year from the date of publication.

3. Written statements were filed on behalf of respondents No. 1 to 4 as well as on behalf of the Inspector General of Prisons, Punjab. In both the written Statements the case of the respondents is, that the petitioners are not the owners of the land acquired as the land stands acquired in the name of Gram Panchayat; that instructions dated 28.12.1979 were withdrawn vide subsequent Punjab Government instructions dated 3.3.1980 and the plea put forth by the petitioners that notification Under Sections 4 and 6 of the Act has lapsed, has become infructuous.

4. During the pendency of the writ petition, an application under Order 1 Rule 10 of the Code of Civil Procedure, purporting to be on behalf of Gram Panchayat, Jamalpur Awana, was filed for becoming a party to the writ petition. According to the averments made in the application, a dispute had arisen as to whether the Muslims migrants' share in the Shamlat-deh vested in the Custodian as evacuee property under the Administration of Evacuee property Act, 1950, or under the Gram Panchayat of the village under the provisions of the Punjab Village Common Lands Act, 1953/1961. The Custodian of evacuee property claimed that it vested in the Custodian under the Administration of Evacuee Property Act, 1950, and on the enforcement of Displaced Persons (Compensation and Rehabilitation) Act, 1954, vested in the Central Government u/s 12 of the said Act and became a part of compensation pool constituted u/s 14. The Gram Panchayats' on the other hand, took the stand that the said share of the muslim migrants in the Shamlat-deh vested in the Gram Panchayats of the villages under the Provisions of the Punjab Village Common Lands Act. A Division Bench of this Court came to the conclusion that the share of the muslims migrants in the Shamlat-deh vested in the Custodian of evacuee property and not in the Panchayats. Applicant-Gram Panchayat assailed the said decision in appeal before the Apex Court and the Apex Court accepted the appeal of the Gram Panchayat and held that share of the muslim migrants in the Shamlat-deh of the village did not vest in the Custodian, but it vested in the Gram Panchayat. The judgment rendered by the Apex Court is reported as Gram Panchayat of Village

Jamalpur Vs. Malwinder Singh and Others, . In reply to application under Order 1 Rule 10 of the CPC the petitioners have stated that the Gram Panchayat is not a necessary party because vide notification dated 3.10.1975, villages Jamalpur Awana and Kulliawal and other villages have come within the municipal limits of District Ludhiana, and as such, the earlier Gram Panchayat whose Sarpanch was Shri Pal Singh has ceased to exist and there have been no elections of the Gram Panchayat, Jamalpur Awana in the years 1977, 1983 and 1993 when the elections of the Gram Panchayat were held in the State of Punjab. Petitioners have also attached certificate dated 24.9.1993 issued by the Block Development and Panchayat Officer, Ludhiana-1 in this respect. Along with the reply, petitioners have also filed a copy of the counter affidavit of Sh. Tejendra Khanna IAS, filed before the Supreme Court in Civil Misc. Petition No. 1035 of 1989 (Gram Panchayat v. Tejendra Khanna and Ors.) and also the order of the Supreme Court dated 2.4.1989.

5. Mr. H.L. Sibal, Sr. Advocate, counsel for the petitioners contended that during the pendency of acquisition proceedings the State Government on 28.12.1979 issued instructions to the effect that in cases where the possession of land is not taken within one year of the issuance of notification u/s 6 of the Act the notification would be deemed to have lapsed. Further, according to him, in this case the possession was not taken within the stipulated period of one year from the issuance of notification u/s 6 of the Act and, therefore, as per instructions dated 28-12-1979 the land of the petitioners has become free from acquisition. For this, reliance was placed upon two judgments of this Court in Parkash Chand v. State of Punjab and Anr. 1983 PLJ 258 and Iqbal Singh and Ors. v. The State of Punjab and Ors. (1988) 93 PLR 575. In reply, learned counsel for the State contended that instructions dated 28-12-1979 were subsequently withdrawn vide instructions dated 3.3.1980 and in view of latter instructions, acquisition proceedings cannot be said to have lapsed. Counsel for the State further stated that petitioners have no locus-standi to file the present writ petition because they are not the owners of the land, and in view of judgment of the Supreme Court reported in Malwinder Singh's case (supra) the land belongs to the Panchayat. Lastly the State counsel contended that the petitioners cannot seek any help from the instructions because possession of the land was taken by the State Government and this is so recorded in the Roznamcha Waqaiti of the village.

6. Before dealing with the contention of Mr. Sibal, it becomes necessary first to decide the objection raised by the learned counsel for the State with regard to locus-standi of the petitioners to file the present writ petition. Admittedly, the land in dispute was allotted to Yusaf and Ali in lieu of their land in Patiala which had been declared as evacuee land and had been allotted to the displaced persons. At one stage, Gram Panchayat tried to dispossess the allottees, who approached this Court by filing Civil Writ Petitions No. 2461 and 2462 of 1970. In the said writ petitions, the Advocate General, Punjab, gave statement that no steps would be taken to dispossess the allottees till a competent Court decides against the allottees, in accordance with law. For taking possession, the Gram

Panchayat challenged the order allotting land to Yusaf and Ali, in an appeal before the Settlement Commissioner, Punjab. The appeal was dismissed on 16.1.1975, whereafter the Gram Panchayat filed a revision before the Chief Settlement Commissioner, Punjab Rehabilitation Department, Jalandhar which too was dismissed on 24.2.1978. Against this order, the Gram Panchayat has filed petition u/s 33 of the Displaced persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred as to the 1954 Act). The last order in this petition was passed on 10.8.1987, which reads as follows:-

"Since the question of regularisation of allotment of evacuee's share in Shamlat after the pronouncement of judgment dated 9.7.1985 of the Supreme Court of India in the case, Gram Panchayat Jamalpur Awana v. State of Punjab, is under active consideration of Government, this case is adjourned sine-die"

The writ petitioners were respondents before the Chief Settlement Commissioner and are also respondents in petition u/s 33 of the 1954 Act, being lessees transferees from Yusaf and Ali. This matter has to attain finality and till the same is pending the contention of counsel for the respondents that petitioners have no locus-standi to file the writ petition, cannot be accepted.

7. The next question which is to be determined is as to whether the State took possession of the land forming subject-matter of the acquisition before issuance of instructions dated 28-12-1979. If this Courts finds that the possession was taken before the issuance of instructions, then nothing survives in the writ petition because it is well-settled that if the possession of (he land forming subject-matter of the acquisition has been taken in accordance with Sections 16 or 17(1) of the Act, the land vests in the Government. Thereafter the Government or any Authority has no authority to withdraw from the acquisition of any land of which possession has been taken. As held by the Apex Court in Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, , the possession contemplated is actual possession and not symbolic possession. Counsel for the Stale in order to show that possession was taken, has referred to copy of Roznamcha Waqaiti dated 20.3.1978 for the year 1977-78 (Annexure R-2/T) in which it finds mention that Jagjit Singh son of Sher Singh cultivated wheat in land bearing Khasra No. 61/6-14/2-15-62/1-2-3-4-5-6-7-8-9-10-11/1-12-13-34-62-11/2, total 116 kanals 15 marlas. It further finds mention that "ownership of the area under wheat cultivation is also hereby delivered to the Jail Department. The assessment of the price of standing crop is to be paid to the cultivator. The transfer of possession was announced by beat of drum in the village through Local Chowkidar. Wages to the chowkidar were not paid. Report in rojnamcha has been entered under report No. 224 in Rojnamcha and requisite entry for the action has been got made in the Jamabandi. After handing over the possession, the relevant papers are being sent to the authorities." Counsel for the State also made reference to judgment of the Apex Court in Balwant Narayan Bhagde's case (supra), to contend that one of the modes of taking possession can be in the form of declaration by beat of drums, as was done in the present

case. It is true that there is no hard and fast rule as to the mode of taking possession, but where the land is lying vacant, there can be beat of drums or a written declaration can be hanged on the spot that the Authority has taken possession of the land. However, in the present case, entry in the Roznamcha Waquiti shows that the land was not lying vacant but wheat crops of Jagjit Singh was standing thereon. The State has not brought anything on record to show that any assessment of the price of the standing crops was made or paid to the cultivator. Award dated 28.12.1979 shows that possession was not taken. In the award, the Land Acquisition Collector has recorded :-

"Since the acquiring department has not yet taken the possession of the land, the question of awarding any interest does not arise.

In the presence of this averment in the award, entry made in the Rapat Roznamcha cannot be taken into consideration because the Land Acquisition Collector is the authority competent under the Act to take possession. The Land Acquisition Collector is the authority competent under the Act to take possession. The Land Acquisition Collector while awarding compensation has specifically stated in the award that possession has not been taken and on that account, interest was not awarded to the petitioners. Moreover, entry in the Rapat Roznamcha is only to the effect that ownership of the area was delivered to the Jail Department, meaning thereby that symbolic possession was delivered and not the actual possession. Another circumstance which would show that possession was not taken is that on 13.6.1984 at the time of motion hearing, dispossession of the petitioners was stayed. By a subsequent order dated 21.3.1985, order dated 13.6.1984 was made absolute. The subsequent order was passed in the presence of counsel for the parties. Thus, I am of the view that the respondents had not taken possession from the petitioners, as contended by the counsel for the State.

8. As regards the contention of counsel for the State that instructions dated 28.12.1979 do not amount to withdrawal of acquisition proceedings and further these instructions were withdrawn vide instructions dated 3.3.1980 and in view of that subsequent instructions, acquisition proceedings cannot be said to have lapsed, suffice it to say the matter is squarely covered by decisions in Parkash Chand's and Iqbal Singh's cases (supra) wherein instructions dated 28-12-1979 and 3.3.1980 were under consideration, and it was held that in cases where possession of the land is not taken within one year after issuance of notification u/s 6 of the Act, the notification would be deemed to have lapsed. As regards the effect of subsequent instructions dated 3.3.1980, it was held that "on the face of it, the communication dated March 3, 1980, withdrawing the earlier instructions dated December 28, 1979 is prospective in effect, that is the earlier instructions with regard to the withdrawal of acquisition proceedings stood withdrawn subsequent to March 3, 1980. This communication cannot possibly have any retrospective effect and cannot revive the acquisition proceedings which had been abandoned or had come to an end with the issuance of the earlier

instructions dated December 28, 1979. "In the present case, notification Under Sections 4 and 6 of the Act was issued on 25.1.1978. As indicated in the award, the State had not taken possession within one year of the issuance of notification u/s 6 of the Act. Thus, in view of Parkash Chand's and Iqbal Singh's cases (supra), with the issuance of instructions dated 28.12.1979, the acquisition proceedings initiated by the Authorities Under Sections 4 and 6 of the Act stood withdrawn or abandoned.

9. As regards the claim of the Gram Panchayat for being impleaded as a respondent, I am of the view that this prayer of the Gram Panchayat cannot be allowed for two reasons firstly, the Gram Panchayat has ceased to exist because the land in dispute came within the limits of municipal Corporation even before the issuance of notification Under Sections 4 and 6 of the Act, and secondly this Court is not deciding as to who shall be entitled to receive compensation. As and when matter with respect to receipt of compensation is raised the same can be decided u/s 30 of the Land Acquisition Act.

10. Consequently the writ petition is allowed, and as a result thereof, it is held that the land of the petitioners is no more subject to the acquisition proceedings and the same stands withdrawn or abandoned. However, it shall not preclude the respondents to acquired land in future. There shall, however, be no order as to costs.