
(1961) 05 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Civil writ No. 426 of 1961

Jaishi Ram Goel and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 26-05-1961

Acts Referred:

Companies Act, 1956 — Section 38, 40, 40(1), 44
Constitution of India, 1950 — Article 226, 31, 31(2)
Land Acquisition (Punjab Amendment) Act, 1953 — Section 17
Land Acquisition Act, 1894 — Section 4, 5

Citation : AIR 1962 P&H 177

Hon'ble Judges : A.N. Grover, J

Bench : Single Bench

Judgement

(1) The petitioners are owners of various plots of land with structures erected on some of them, which are situated in Mauza Paranala or Mauza Bahadurgarh Tehsil Jhajjar, and by the present petition under Article 226 of the Constitution they have challenged the acquisition proceedings relating to the aforesaid land.

(2) A notification dated 16th February 1961 was issued by the Punjab Government u/s 4 of the Land Acquisition Act, 1894 (hereinafter called the Act), wherein it was stated that the land in question was likely to be required by the Government at public expense for a public purpose, namely, for setting up a factory for the manufacture of sanitary-wares etc. at villages Parnala and Bahadurgarh Tehsil Jhajjar,, District Rohtak, and it was notified that the land in the locality, of which description was given, was likely to be required for the above purpose. Further in exercise of the powers under the Act, the Governor of the Punjab directed that action u/s 17(1) shall be taken in this case on the grounds of urgency and provisions of Section 5A shall not apply in regard to this acquisition (Annexure "C"). This was followed by another notification dated 17th February 1961 which contained a declaration under the provisions of Section 6 of the Act, the opening part being the same as has already been set out in respect of the notification u/s 4. In this notification it was further stated that in view of

the urgency of the acquisition the Governor, in exercise of the powers u/s 17(2) (c) of the Act, had directed that the Collector, Rohtak, shall proceed to take possession of the land (Annexure "B").

(3) According to the allegations in the petition the entire acquisition proceedings initiated, taken and proposed to be taken in pursuance of the aforesaid notifications suffered from a number of infirmities. It is alleged inter alia that the acquisition proceedings are being taken for the sake of and at the cost of "Hindusthan Twyford's Limited" incorporated on 8th February 1960 at Calcutta under the Indian Companies Act, 1956. This Company has been impleaded as respondent No. 4. This respondent proposed to set up and construct a plant of a factory for the purpose of manufacture and production of sanitary-ware near Bahadurgarh. The prospectus shows that it was intended to acquire about 30 or more acres of land for that purpose by the Company. Certain plots of land had been purchased by the Company by private treaty, those plots being adjacent to or surrounded by the plots of land notified for acquisition.

According to the petitioners, the land of respondent No. 4 had been purposely left out of the notices for acquisition because the acquisition was being made for the benefit of respondent No. 4 and the entire cost was being met by the aforesaid respondent. The petitioners asserted that the acquisition was not to be made out of whole or any portion was not to be made out of whole or any part of public funds as there was no provision in the budget of the State in respect of the costs involved in the said acquisition. Thus the case of the petitioners substantially is that the acquisition of the land in question is being made for the aforesaid Company and this is being done by circumventing the entire provisions contained in Part VII of the Act which alone were applicable in this case. The part of the notification directing that the provisions of section 50A shall not apply as also the exercise of powers u/s 17 as amended by the Land Acquisition (Punjab Amendment) Act, 1953, have been challenged

The written statement filed on behalf of the State is not a very illuminating one. However, it is stated that the land was being acquired for public purpose at public expense, the compensation for which would be paid from public funds. An objection was also raised that the determination of "public purpose" was not justifiable. The exercise of powers u/s 5A and Section 17 is sought to be justified. The arguments have however, proceeded on the assumption that ultimately the land will be placed at the disposal of the aforesaid company.

(4) The learned counsel for the petitioners has referred to the relevant provisions of the Act to indicate that there are three ways of making a valid acquisition. The first one is where it is made for a public purpose by the State. Secondly, it can be made for a Company for the purpose of public e.g. whether the Government subsidises a scheme for promotes and itself contributes towards the development of a scheme for the benefit of the community. Thirdly, there can be acquisition for the benefit and use of a company alone. It is submitted that in the present case the acquisition is not being made for any public purpose and that it is solely

being done for the benefit and use of a private Company that has been promoted for making profit for its members. It is not denied that acquisition could be made for such a Company but it is vehemently urged that the can be done only under the provisions contained in Part VII which begins with S. 38 and ends with Section 44.

According to the points canvassed on behalf of the petitioners an acquisition can be validly made under the Act, apart from the provisions contained in Part VII, only when it is made for a public purpose that being a justifiable issue. Reliance in this connection has been placed on *The State of Bombay Vs. R.S. Nanji*, *Satya Narayan Nathani Vs. State of West Bengal and Another*, and *Gobardhan Jayaswal v. First Land Acquisition Collector* 62 CWN 158, as also a Bench decision of this Court in *Bhagwat Dayal and Others Vs. Union of India (UOI) and Others*, . The learned Advocate-General submits that the first three cases would not be of such assistance as they did not relate to proceedings under Act. He has sought to distinguish them by referring to the observations made in *Pandit Jhandu Lal and Others Vs. The State of Punjab and Others*, with regard to the applicability of Art. 31 of the Constitution, the suggestion being that the Act was immune from the attack based on the provisions of Article 31(2) owing to the provisions contained in clause 5(a) of that Article which saved an existing law of the nature of the Act.

The Bench decision of this Court, however, related to the Act but its correctness is assailed for the aforesaid reason. The Bench has held that the State Government must initially determine whether a particular purpose is or is not a public purpose and whether the acquisition of a particular piece of land would serve that public purpose. This determination is not final and when the question is raised before Courts of law then it is their duty to determine the nature of the purpose for which the land is being acquired. There is, however, a presumption that the decision of the State Government on this question is correct, though this presumption is rebuttable. Sitting singly it is not possible for me to take a view different from the one expressed by the Bench. Even if it be assumed that the correctness of that view is not shaken by the decision of the Supreme Court in *Pandit Jhandu Lal and Others Vs. The State of Punjab and Others*, and *Babu Barkya Thakur Vs. The State of Bombay and Others*, , the learned Advocate-General has sought to argue that both the requirement of public purpose as also the requirement that the acquisition should be at public expense have been fully satisfied in the present case.

My attention has been invited to *Babu Barkya Thakur Vs. The State of Bombay and Others*, where the notification u/s 4 was in similar terms, namely, that the land was stated to be needed for a Company for its factory buildings etc. Their Lordships observed that acquisition for a Company would in substance be for a public purpose inasmuch as it could not be seriously contended that constructing dwelling houses and providing amenities for the benefit of the workmen employed by it and construction of some work of public utility did not serve a public purpose. Their Lordships proceeded further to observe :

"It is not necessary for the purposes of this case to go into the question whether acquisition for a Company, even apart from the provisions of S. 40, will be for a public purpose, or justifiable under the provisions of the Act, even on the assumption that it will not serve a public purposes. The facts of the present case have not been investigated, as this Court was moved when only a notification u/s 4 of the Act had been issued; and the purpose of the acquisition in question was still at the enquiry stage."

In the present case, however, the purpose was declared u/s 6 and that declaration, so it is said by the learned Advocate-General shall be taken to be conclusive evidence that the land is needed for a public purpose in accordance with sub-section (3) of Section 6 of the Act. Alternatively the submission made is that setting up of an industry which would provide modern conveniences in the shape of sanitary-wares would be a work of public utility and thus one of the tests indicated by the Supreme Court in Babu Barkya Thakur Vs. The State of Bombay and Others, would be satisfied. Reference is also made to S. 40(1)(b) which appears in Part VII of the Act and which is to the following effect:

"40. Previous enquiry. (1) Such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector u/s 5-A sub-section (2), or by an enquiry held as hereinafter provided:

(a) *** **

(b) that such acquisition is needed for the construction of some work and that such work is likely to prove useful to the public."

The learned counsel for the petitioners has relied on a discussion with regard to the meaning of the expression "public purpose" in Mr. D. N. Bannerjee's Fundamental Rights, pages 362 to 373, where a number of Indian and American decisions have been mentioned, but the law has been laid down for our purpose in the above decision of the Supreme Court (Babu Barkya Thakur Vs. The State of Bombay and Others, in which at page 1205 the learned Chief Justice has observed:

"It will thus be noticed that the expression "public purpose" has been used in its generic sense of including any purpose in which even a fraction of the community may be interested or by which it may be benefited."

Now, this cannot be denied that whenever a factory for manufacturing purposes is to be set up, dwelling houses will also have to be constructed for workers and other buildings will have to be built up for providing amenities for their benefit. The Supreme Court itself expressed that view, to which reference has already been made. Moreover, it will not be inaccurate to say that certain members of the community would benefit by the setting up of such a factory where a new industry will be developed, the cost of sanitary wares which are imported being very high and thus a work of public utility would be established. As a declaration u/s 6 has already been made at least a presumption must be raised that the

acquisition is being made for a public purpose. The facts alleged by the petitioners to the extent they are not disputed are not sufficient to rebut that presumption. I would, accordingly, hold that the acquisition in the present case is being made for a public purpose. Once that conclusion is reached, the ratio of the decision in Pandit Jhandu Lal and Others Vs. The State of Punjab and Others, will at once become applicable.

In that case it has been laid down in categorical terms that in case of an acquisition for a Company simpliciter a declaration u/s 6 of the Act cannot be made without satisfying the requirements of Part VII. But, that does not necessarily mean that an acquisition for a Company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. According to Sinha, C. J.:

"In other words, the essential condition for acquisition for a public purpose is that the cost of the acquisition should be borne, wholly or in part out of public funds. Hence, an acquisition for a Company may also be made for a public purpose, within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds. If, on the other hand, the acquisition for a Company is to be made at the cost entirely of the Company itself, such an acquisition comes under the provisions of Part VII. As in the present instance, it appears that part at any rate of the compensation to be awarded for the acquisition is to come eventually from out of public revenues, it must be held that the acquisition is not for a Company simpliciter. It was not, therefore, necessary to go through the procedure prescribed by Part VII."

In the present case the written statement contains a definite assertion that the cost of acquisition shall be borne out of the public funds. It cannot consequently beheld according to the above Supreme Court decision that the acquisition is for a Company simpliciter and it is necessary to go through the procedure prescribed by Part VII.

(5) The learned counsel for the petitioner has drawn my attention to a report made by the Tehsildar which is attached as "R/1" to the written statement wherein it is stated that quite a number of plots with are being acquired have structures of various natures and some of them are residential plots. It is pointed out that u/s 17(1) it is only waste or arable land in respect of which powers can be exercised. It is submitted that it is not possible to regard the aforesaid plots on which structures are admitted to be existing as waste or arable. By the Punjab Act 47 of 1956, however, an amendment has been introduced in section 17 by the addition of clause (c) in subsection (2). That provision is to the effect that whenever land is required for a public purpose which, in the opinion of the appropriate Government is of urgent importance, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government enter upon and take possession of such land provided he shall not take possession of any building or part of the

building without giving to the occupier thereof at least forty-eight hours" notice of his intention to do so.

It is submitted by the learned Advocate-General that clause (c) covers the present case as notice u/s 9, sub-section (1) as mentioned in section 17(1) was duly published and it is implicit in the proviso to clause (c) that possession can be taken even of those lands on which buildings exist. The learned counsel for the petitioners has not been able to controvert this position. Moreover, it is not possible to take any serious notice of the contention advanced on behalf of the petitioners in respect of the exercise of powers u/s 17 for the simple reason that since a number of petitioners have preferred the petition, the numbers of their plots are not stated separately and individually and such an omnibus petition on behalf of these petitioners cannot be entertained. All that could be done was to grant relief to one petitioner whomsoever the learned counsel might have selected for pressing the claim but that the neither been done nor indeed it was possible to do in the absence of separating the numbers of the plots belonging to that petitioner.

In the result, this petition fails and it is dismissed, but in view of all the circumstances I make no order as to costs.

JE/M/D.R.R.

(6) Petition dismissed.