
(2002) 01 P&H CK 0103
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 13540 of 1995

Joginder Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 6

Citation : (2002) 3 RCR(Civil) 31

Hon'ble Judges : Harjit Singh Bedi, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : Sukhbir Singh, for the Appellant; P.S. Hundal, A.A.G., Punjab for Respondent No. 1 and Amit Rawal, for the Respondent

Final Decision : Allowed

Judgement

Harjit Singh Bedi, J.—The petitioners belong to villages Palahi, Chak Hakim and Parsrampur respectively, District Kapurthala and as per their case are living in these villages in small houses constructed by them. The State Government issued a Notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"), which was published in the Gazette on 12.5.1995, notifying its intention to acquire the land belonging to the petitioners and other landowners for the purpose of setting up an Industrial Focal Point. Information of the Notification was given in the locality and was also published in two Newspapers on the same date. Some of the petitioners filed their objections u/s 5-A of the Act, but after consideration they were rejected. A declaration u/s 6 of the Act followed which was published in the Official Gazette on July 03, 1995, in the Indian Express on July 05, 1995 and Nawan Zamana on July 08, 1995.

2. Aggrieved thereby, the petitioners filed the present petition in September, 1995 and an order of status-quo with respect to possession was also made by this Court on 13th September, 1995. This petition was admitted for hearing on 29th July, 1997 and was ordered to be listed for final hearing within six months but has, ultimately, come up for hearing today.

3. The learned counsel for the petitioners has raised two preliminary arguments; firstly that the declaration u/s 6 of the Act itself, was published beyond a period of one year from the date of publication of the Notification u/s 4 of the Act and the declaration was, therefore, non-est; and secondly, as the areas proposed to be acquired had earlier been declared to be a controlled area by a Notification dated 20.11.1974 issued under the Punjab Schedule Roads and Controlled Area (Restriction of Un-regulated Development) Act, 1963, which specifically provided that this area could not be acquired for use for industrial purposes, the acquisition was bad for this reason as well.

4. A reply has been filed by the respondents in which the facts as stated with regard to the date of publication of the declaration u/s 6 of the Act, are concerned, have been admitted. In reply to the second objection raised by the petitioners pertaining to the Notification dated 20.1.1974, it has been pleaded that the State Level Acquisition Board had approved the acquisition and that the Notification u/s 4 and the declaration u/s 6 had been issued thereafter.

5. Mr. Sukhbir Singh's arguments have to be dealt with in the light of Sections 4 and 6 of the Act. The relevant portions of the aforesaid sections are reproduced below:-

"4(1) Whenever it appears to the (appropriate government) that land in any locality [is needed or] is likely to be needed for any public purpose [or for a company], a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language] and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)]".

6(1) Subject to the provisions of Part VII of this Act, [when the [appropriate government] is satisfied, after considering the report, if any, made u/s 5A, Sub-section (2)], that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such government or of some officer duly authorised to certify its orders [and different declarations made from time to time in respect of different parcels of any land covered by the same notification u/s 4, Sub-section (1), irrespective of whether one report or different reports has or have been made (whenever required) u/s 5A, Sub-section (2)]:

Provided that no declaration in respect of any particular land covered by a Notification u/s 4, Sub-section (1),-

(i) published after the commencement of the Land Acquisitionb (Amendment and Validation), Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1894 shall be made after the expiry of three years from the date of the publication of the notification; or

"(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:)"

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority."

6. It will be seen from proviso (ii) of Section 6, that a time limit of one year has been fixed for the purpose of the publication of the declaration u/s 6 of the Act. It is the conceded position that the last date of the publication u/s 4 of the Act was 5.7.1994, whereas the last date of the publication by the declaration u/s 6 of the Act was on 8.7.1995, which is beyond a period of one year. It is, therefore, clear that declaration u/s 6 was beyond time. The acquisition proceedings are, thus, liable to be quashed on this short ground.

7. In the light of what we have held above, it would be unnecessary for us to go into the second argument raised with regard to the effect of the notification dated 20.11.1974 on the proposed acquisition.

For the reasons recorded above, the writ petition is allowed and the Notifications is sued under Sections 4 and 6 of the Act, are quashed. No costs.