
(2009) 01 P&H CK 0121
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7730 of 2008

Karnail Singh and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:

Citation : (2009) 3 PLR 100 : (2009) 2 RCR(Civil) 649

Hon'ble Judges : M.M.Kumar, J and Jora Singh, J

Advocate : Mr. Munish Jolly, Advocate. Mr. Suvir Sehgal, Addl. AG, Punjab.,
Advocates for appearing Parties

Judgement

M.M. Kumar, J.

1. This petition filed under Article 226 of the Constitution prays for quashing notification dated 2.12.1988 (P7) issued under Section 4 and declaration dated 5.12.1988 (P8) issued under Section 6 of the Land Acquisition Act, 1894 (for brevity, 'the Act').

2. Facts of the case may first be noticed. Petitioner No. 1 to 13 are residents of village Issapur, Tehsil Dera Bassi, District S.A.S. Nagar, Mohali, whereas petitioner No. 14 is the Gram Panchayat of Village Issapur. The land falling in the revenue estate of village Issapur was sought to be acquired by the respondents for construction of a link canal to the main Satluj Yamuna Link Canal (SYL), namely, 'Bassi Distributory'. For the aforementioned purpose a survey was carried out way back in the year 1988. However, when the villagers and the Gram Panchayat came to know that the distributory would pass through the worship place of the village and 400 feet long roads, which are metalled and connect the other villages, they objected to it. In this regard a resolution dated 24.1.1988 was also passed by the Gram Panchayatpetitioner No. 14 (P1). The matter was also agitated by making representation dated 14.3.1988 (P2) followed by another detailed representation dated 16.3.1988 (P3), which was forwarded to the Secretary to Government, Punjab, Department of Irrigation and Power, Chandigarh. A communication in this regard was sent to the Sarpanch,

Gram Panchayat, Issapur, on 25.3.1988 by the Officer on Special Duty to Governor, Punjab (P 4). The petitioners have claimed that thereafter the matter was taken up with the concerned department and correspondence was made from time to time and assurance was given that alignment of the distributory would be relocated, however, while doing so the other land of the Gram Panchayat would fall in the way of the distributory. The Gram Panchayat consented the same. A resolution dated 6.6.1988 was passed by the Gram Panchayat which is to the effect that if the distributory is constructed over land falling under Khasra Nos. 83//24/23, 23 after its relocation, then the Gram Panchayat would have no objection. It was also decided that a copy of the resolution be sent to the concerned department for setting up the distributory over the aforementioned khasra numbers and compensation be paid (P6).

3. On 2.12.1988 (16.11.1988?), a notification under Section 4 of the Act was issued for acquiring the land for public purpose, namely, for construction of Bassi Distributory in village Isapur, Tehsil Rajpura, District Patiala. The provisions of Section 17 of the Act were also invoked by giving the reasoning that construction of S.Y.L. Canal (Punjab portion) has to be started immediately so as to meet the time bound construction schedule of the project based on the interstate agreement between the State of Punjab, Haryana and Rajasthan (P7). Through the aforementioned notification, 9.31 acres of land belonging to the petitioners (as detailed in para 9 of the petition) was sought to be acquired. On 5.12.1988, a declaration under Section 6 read with Section 17(1) of the Act was issued acquiring the land in question (P8).

4. On 21.10.1989, the Gram Panchayat, Isapur, passed another resolution and decided to approach the concerned authorities regarding change of alignment of the distributory as the earlier assurances given to them were not fulfilled (P9). On 27.10.1989, a representation was made to the Land Acquisition Collector for taking no further steps concerning acquisition of the land because the matter was pending consideration of the higher authorities (P10). However, the Land Acquisition Collector passed an award on 4.1.1990 in respect of the acquired land (P11).

5. Ultimately, when the representations made by the petitioners/land owners failed to yield any result they filed references under Section 18 of the Act in the Court of learned Additional District Judge, Patiala. In all 12 land references were filed on 8.8.1991. During the pendency of the aforementioned references, it came to the knowledge of the petitioners that a letter dated 19.3.1990 was written by the Executive Engineer, Irrigation Development Investigation, Division No. III, Rajpura, to the Land Acquisition Collector intimating that the matter regarding change in alignment of Bassi Distributory was referred to the Superintending Engineer Investigation. Circle, Irrigation Development Punjab, Chandigarh, vide reference No. 993839/1M, dated 8.2.1990 and 10112/1M, dated 15.2.1990 and as such the Collector was asked that no award/payment may be made to the land owners (P13). Faced with this situation, the land

owners filed an application dated 28.5.1992, in the Court of learned Additional District Judge, Patiala for referring the case back to the Land Acquisition Collector to ascertain the fact whether the land in question was to be acquired or not (P14). Reply to the said application was filed by the respondents admitting the fact that there was dispute with regard to the alignment of the distributory (P15). In these circumstances, the reference Court passed an order dated 2.9.1992 and returned all the references filed under Section 18 of the Act back to the Land Acquisition Collector (P 16).

6. It is claimed that after dismissal of the land references the matter went back and the Government though had rescinded from the acquisition, however, no decision in that regard has been taken. Instead, the P.W.D. Department of the respondent State of Punjab has constructed Health Centre in the acquired land by spending huge amount. The petitioners have placed on record photographs of the Community Health Centre (P17 & P19) asserting that the same have been constructed on land which was sought to be acquired for construction of the Bassi Distributory. It has further been asserted that in 2007 the mutation of the land has been entered in favour of the State Government at the back of the petitioners, which has been objected to by them and the matter is pending with the Assistant Collector Ist Grade, Dera Bassi.

7. The grievance of the petitioners is that in the absence of any decision by the State Government regarding acquisition of the land in question no award could have been passed. It has also been pleaded that on the one hand urgency provision of Section 17(1) of the Act were invoked at the time of issuance of declaration under Section 6 but till date possession has not been taken from the petitioners. Even the petitioners have built their houses, Gram Panchayat has built Bus Stand and a Chaupal on the acquired land, photographs of which have been placed on record (P20 to P22). Now the land in dispute is the centre point of Dera Bassi Town, which has been declared as a Sub Division. A Judicial Court complex has also come up there and the estate of village Isapur has also come within the municipal limits of Dera Bassi. It has also been asserted that the purpose of acquiring the land has been defeated because the agreement with the State of Haryana for construction of S.Y.L. Cansal has been terminated by the respondent State of Punjab by promulgating the Punjab Termination of Agreements Act, 2004. In the instant case even no compensation in terms of subsection (3) of Section 17 of the Act has been offered to the land owners at the time of passing of the award, which was stayed by the respondents themselves vide letter dated 19.3.1990 (P13). Therefore, by virtue of Section 11A of the Act no award is deemed to have been passed qua the land in dispute.

8. In the written statement filed on behalf of respondent Nos. 1 to 4 the stand taken is that the land in question was acquired and the Land Acquisition Collector has passed Award No. 404/PSYL dated 4.1.1990 for construction of Bassi Distributory SYL Canal Project Part III Punjab Portion, which is now known as Sh. Dashmesh Canal Project for the irrigation purpose. It has been asserted that the

compensation was deposited in the District Treasury Office, Patiala, by the Land Acquisition Office SYL Canal Project, Punjab, Patiala. However, the details of the compensation amount and the date of deposit are missing. It has been further asserted that the aforementioned project has been finalised and approved by the Central Water Commission vide its Memo No. 2/43/83/PPC/1536, dated 2.12.1987. The revised project has been sent to the Central Water Commission for approval by the State of Punjab, vide letter No. 9/3/08PJ(1)/5626, dated 1.4.2008 (R2). It has been denied that the petitioners had ever raised objection about the acquisition except petitioner No. 14. It has also been pointed out that the Bassi Distributory passes through 26 villages and in case the award is quashed the whole scheme would be adversely affected in vital respect. The factual position narrated in the preceding paras has been admitted. However, it has been denied that the Government has withdrawn the acquisition. The answering respondents have blamed the Sarpanch of the Gram Panchayat for allowing construction over the acquired land. It has been asserted that despite the fact that he was conversant about announcement of award and acquisition of land for the public purpose, yet, he willingly constructed the State Government buildings on the already acquired land after concealing true facts. It has also been pointed out that mutation was also entered on 16.1.2001 but the same could not be sanctioned due to protest by the land owners. The land was acquired under the provisions of Section 17(1) of the Act but due to some bad conditions and terrorism, the work went on slowly. The assertion made by the petitioners in paras 35 and 41 of the petition regarding promulgation of the Punjab Termination of Agreement Act, 2004 has been denied in the corresponding paras 35 and 41 of the written statement.

9. We have heard learned counsel for the parties at a considerable length. The admitted facts are that notification under Section 4 of the Act was issued on 2.12.1988 (P7). Thereafter even objections were heard under Section 5A of the Act and then declaration under Section 6 of the Act was issued. The public purpose of acquisition is construction of "Bassi Distributory" which is a link canal to the main Satluj Yamuna Link Canal (SYL). The award was also announced on 4.11.1990 (P11), which clearly stipulates that the date of award would be the date of taking possession.

10. There appears to be a serious thinking regarding change in alignment of the link canal. A letter dated 19.3.1990 (P13), has been addressed by the Executive Engineer to the Land Acquisition Collector stating that matter concerning alignment has been referred to the Superintending Engineer on 8.2.1990 and, therefore, no award or payment was to be made to the land owners. The dispute lingered on but the award was announced on 4.11.1990. The land owners filed application under Section 18 of the Act which was referred to the reference Court of learned Additional District Judge. There, in reply to the application filed by the landowners, it was stated by the respondents that on account of dispute concerning alignment of the link canal, the payment as per award has not been made. When the application came up for consideration before the learned District

Judge on 2.9.1992, the following order was passed :

"5. Before leading any evidence the claimants filed an application that there is dispute as to the alignment of the distributory and the department is not sure whether the land in question is to be acquired or not. It was further averred that the payment of compensation has not been made and has been withheld because of dispute regarding alignment. A prayer was made that the cases may be referred back to the Land Acquisition Collector.

6. On behalf of the Land Acquisition Collector reply to the application has been filed admitting that there is a dispute regarding alignment of the distributory and payment of compensation has not been made. It has been submitted that the land references may be sent back to the Land Acquisition Collector.

7. In view of the admitted case of the parties, that there is dispute regarding compensation as per award of the land Acquisition Collector has not been made, the references are infructuous. Accordingly the land references are returned to the Land Acquisition Collector, SYL, Canal Project, Punjab, Patiala leaving the parties to bear their own costs."

11. The petitioners have rightly complained that no decision at Government level has been taken. The possession of the land has also not been taken from them and the revenue record continues to reflect them as owner in possession till 2006. The Government could not have entered possession without complying with the mandate of Section 17(3A), which reads thus :

"17. Special powers in cases of urgency.

(1) to (3) xxx xxx xxx

(3A) Before taking possession of any land under subsection (1) or subsection (2), the Collector shall, without prejudice to the provisions of subsection (3),

(a) tender payment of eight per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in Section 31, subsection (2),

and where the Collector is so prevented, the provisions of Section 31, subsection (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(3B) & (4) xxx xxx xxx"

12. A perusal of the aforesaid provision shows that before entering possession the respondents are required to pay 80% of the amount of compensation which has not been paid till date. The respondents have not taken possession. In the absence of any decision the respondents have constructed a Health Centre (P17 & P 19) on the land in dispute. The petitioners have constructed their houses and the Gram Panchayat has also constructed a chaupal there.

13. In the facts and circumstances of this case, we deem it just and appropriate to issue following directions :

(a) The Government by keeping in view the provisions of Section 48(1) of the Act, shall take a decision whether it wishes to continue with the acquisition or it does not wish to complete acquisition considering the same to be unnecessary. The provision of Section 48 of the Act reads thus :

"48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. (1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

A perusal of Section 48 of the Act shows that Government can withdraw from acquisition if it does not deem it necessary. As per the statement made before the learned Additional District Judge, decision by the Government has to be taken. The needful be done within two months from the date of receipt of a certified copy of this order;

(b) If the Government decides to withdraw from acquisition then land would revert back to its owners alongwith payment of compensation as envisaged by Section 48 of the Act. Let all necessary steps be taken within one month after the decision on the question of acquisition;

(c) If the Government decides to acquire land then a copy of the decision be sent to the petitioners under registered A.D. cover. The decision taken by the Government be not given effect till the expiry of one month from the date of delivery of copy thereof to the petitioners.

14. The writ petition stands disposed of in the above terms.