
(1972) 04 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 3967 of 1970 and Civil Miscellaneous No. 3372 of 1972

Kishori Lal

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 25-04-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 4, 5

Citation : AIR 1973 P&H 358

Hon'ble Judges : R.S. Sarkaria, J

Bench : Single Bench

Judgement

1. This is a writ petition under Articles 226/227 of the Constitution for the issuance of an appropriate writ in the nature of Certiorari after quashing the notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter called the Act) and further proceedings on their basis.

2. The petitioner is owner of 3/4th share of Khasra No. 35/17/5 measuring 6 Marlas, and 1/2 share of Khasra No. 35/17/3, measuring 2 Marlas within the Municipal area of Ropar, Respondent 3 (M/s. The Ambala Bus Syndicate (P) Ltd. Ropar) is a co-sharer owning the remaining shares. The petitioner constructed a building on a part of the land about 40 or 50 years ago and that portion is recorded in the Jamabandi as "Ghair Mumkin Makaan". Dispute arose between the co-sharers over the possession and user of the shop on the land. It is alleged that under the influence of Respondent 3, the State Government (respondent 1) issued the impugned Notification, D/- November, 20, 1968, published in the Punjab Government Gazette (Copy Annexure "A") stating that the land specified therein was "likely to be needed for the purpose and at the expense of Ambala Bus Syndicate Private Limited, Ropar namely, for the extension of Bus Stand for Ambala Bus Syndicate Private Limited. The petitioner filed objections u/s 5A in the form of notice u/s 80 of the CPC on 31-1-1969 to the Collector, Ropar. No decision, however, was taken thereon. No opportunity of hearing the objections

was afforded to the petitioner nor was any decision taken thereon. On October 9, 1970, the impugned notification, dated September 30, 1970, u/s 6 of the Act was published in the Punjab Government Gazette (Annexure "B"). It was stated therein that the land was required for the aforesaid Syndicate at the expense of the Syndicate.

3. These acquisition proceedings are being challenged on the ground that they are mala fide and the provisions of the Act have been invoked as a colourable exercise of jurisdiction to acquire immovable property for the benefit of a private person and not for a public purpose.

4. In the return, it is admitted that the land is being acquired for the purpose of the private Company (Respondent 3) for its Bus Stand. It is not denied that no part of the compensation is to be paid out of the public revenue.

5. Shri R. K. Chhibber, Learned counsel for the respondents, has very frankly made available and placed for my perusal, the departmental records. From it, it is crystal clear that the contention of the petitioner viz., that the land is being acquired for the benefit of the Private Company (Respondent 3) at the latter's expense, is factually correct.

6. Shri S. K. Jain, learned counsel for the petitioner contends that the provisions of the Act can be invoked for acquiring land either for a public purpose, or for a Company. But if the land is to be acquired for a public purpose, an essential condition is that the compensation should be paid wholly or partly out of public revenue, and it is to be acquired for a Company, at the latter's expense, it is mandatory for the authorities to follow the procedure laid down in Chapter VII of the Act. It is maintained that the impugned proceedings do not adopt either of these courses. Stress has been laid on the fact that not a penny towards this acquisition is going to be contributed out of public revenue and that the entire compensation, according to the admission of the respondents, is to be paid by the Company. In support of his contention, the learned counsel has referred to Pandit Jhandu Lal and Others Vs. The State of Punjab and Others, ; and Shyam Behari and Others Vs. State of Madhya Pradesh and Others, .

7. Mr. R. K. Chhibber, learned counsel for the respondents has no quarrel with the statement of law on the point made by the petitioner's counsel.

8. The following stark facts are not disputed in this case:--

(1) The impugned notifications under Sections 4 and 6 do not even make a pretence of saying that this land was required for a public purpose. Rather, it is candidly stated therein that the land was required for the Bus Stand of the Private Company.

(2) The impugned notification clearly show that the acquisition was being made wholly at the expense of the Company (Respondent 3).

(3) The correspondence in the departmental file particularly, the letters dated

April 12, 1967 and April 21, 1967, makes it clear that the entire compensation whether awarded by the Collector or enhanced by the Court on reference, was to be paid by this Private Company out of its funds.

(4) Admittedly, the procedure prescribed by Part VII of the Act has not been followed.

In Pandit Jhandu Lal and Others Vs. The State of Punjab and Others, , their Lordships of the Supreme Court laid it down:--

"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. In such a case, it is not necessary to go through the procedure prescribed by Part VII. 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."

9. This principle was reiterated by the Supreme Court in Shyam Behari and Others Vs. State of Madhya Pradesh and Others, in these terms:--

"Where in a land acquisition proceedings the entire compensation to the land owner is to be paid by the Company for which the land is acquired and no part of the compensation is to come out of public revenues or some fund controlled or managed by a local authority the notifications, issued by the Government declaring that the land is needed for a public purpose, must be held to be invalid in view of Section 6(1) of the Act."

10. The above rule will apply with greater force to the facts of the instant case, because here not even a pretence of declaration has been made u/s 6(3) of the Act, that the land is being acquired for a public purpose at public expense. The impugned notifications under Sections 4 and 6 and the further proceedings u/s 9 of the Act are, therefore, to be struck down on this short ground alone.

11. For the foregoing reasons, I would allow this petition, quash the impugned notifications and further proceedings in pursuance thereof. Since the learned counsel for the respondents has very frankly and correctly placed the factual position before the Court and has not joined issue with the petitioner's counsel, with regard to the legal proposition propounded by him, I would leave the parties to bear their own costs.

12. Petition allowed.