(1983) 11 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1124 of 1978

Lata Rani APPELLANT

Vs

State of Punjab and others . RESPONDENT

Date of Decision : 09-11-1983

Acts Referred:

Citation : (1984) PLJ 182 : (1985) RRR 650

Hon'ble Judges : I.S.Tiwana, J

Advocate : Pawan Bansal, Advocates., R.K. Mittal, J.R. Mittal, Advocates for appearing Parties

Judgement

I.S. Tiwana, J. (Oral)

1. In pursuance of a notification published on 16th October, 1970 under section 4 of the Land Acquisition Act (for short, the Act), the respondentState Government acquired 196 acres of land for setting up an urban estate at Bhatinda. This included 1,200 square yards of petitioner''s land. While determining compensation payable for the land of the petitioner under the Act, the Land Acquisition Collector instead of awarding any cash compensation made an arrangement in terms of subsection (3) and (4) of section 31 of the Act in the following terms :

"The Government have decided to adjust residential plots in the Urban Estate or in the alternative to allot plot of the same size as far as possible on the payment of development charges and on the commitment from the side of the prospective owners of the residential plots that they will abide by the provisions of the Punjab Urban Estate (Development and Regulation) Act, 1964, and the Rules framed thereunder and as such other conditions as may be imposed by the Government. This meets with the objection/demand of the owner of small residential plots".

2. It is not a matter of dispute that in terms of the abovenoted arrangement, the petitioner had made an application for the allotment of a plot in lieu of the

acquired land and had also deposited. Rs. 2,500/ vide receipt No. 50, dated 1st February, 1972 towards the development charges of the plot to be allotted to her.

3. Later she was informed vide letter dated 7th December, 1972 (Annexure P.4) that in terms of the abovenoted arrangement as incorporated in the award of the Collector itself she was going to be allotted a plot of 1,000 square yards in lieu of her acquired land. The operative part of this letter reads as follows :

"You are hereby informed that a plot measuring 1,000 sq. yards is being proposed to be allotted to you. After deducting the abovesaid area out of your acquired land only 200 sq. yards area becomes surplus for which Rs. 920.00 by way of compensation is due to you. If you accept the abovesaid plot then, for this, send the enclosed affidavit duly executed on judicial stamped paper worth Rs. 3/ and duly attested by Magistrate First Class or Notary Public or Oath Commi., to this office within 15 days of the issuance of this letter."

In response to this communication, the petitioner fulfilled the requisite formalities of submitting her affidavit duly attested by the Magistrate 1st Class vide her letter dated 14th December, 1972 (Annexure P.5). Since the respondentauthorities failed to take any steps for the allotment of the plot to the petitioner she issued a notice demanding fulfilment of the promise made to her and in response to that the Estate Officer, Urban Estates, Punjab, vide his letter dated 26th February, 1973 (AnnexureP.6) informed her as follows :

"In response to your notice dated 8.9.72 you are hereby informed that it has been decided to allot a plot of 1000 sq yards in the Urban Estate of Bhatinda to Shrimati Lata Rai. This allotment will be made along with other oustees."

As the authorities again failed to move into the matter, the petitioner served them with another notice (Annexure P.7) asking for the fulfilment of the arrangement made by the Collector for the payment of compensation to her. In response to this, the respondentauthorities informed her as follows :

"In response to your letter dated 14.11.77 on the above subject.

In accordance with the policy of this department maximum one kanal plot can be allotted. If you are willing to get, you may send your willingness. Then suitable action will be taken accordingly."

It is this stand of the respondentauthorities which is now impugned by the petitioner in this petition under Article 226 of the Constitution of India primarily on the ground that the respondentauthorities cannot be permitted to go back from their commitment to allot a 1,000 sq.yards plot to her in lieu of her acquired land.

4. Shri J.R. Mittal, the learned counsel for the petitioner, forcefully urges that the award made by the Collector incorporating the arrangement therein under section 31(3) and 31(4) is binding on the respondentauthorities and they cannot possibly wriggle out of the same. According to the learned counsel these

authorities are duty bound to carry out this arrangement and the petitioner is entitled to a Writ Mandamus to that effect. On behalf of the respondentauthorities it is pleaded that since the Government has taken a policy decision that no plot bigger than 500 sq. yards in area has to be carved out in any urban estate set up by the Government, the petitioner cannot possibly be allotted plot of 1,000 sq. yards. Further, the plea is that the respondentauthorities are not bound to literally carry out the abovenoted arrangement as incorporated in the award of the Collector because all that was said in that award was that the Government authorities would stick to that arrangement as far as possible. According to these authorities, it is no more possible for the Government in view of its policy decision to carve out a plot of 1,000 sq.yards in favour of the petitioner. Having given my thoughtful consideration to the entire matter in the light of the submissions of the learned counsel for the parties I see no merit in the stand taken by respondent authorities.

5. It can neither be disputed nor is disputed by the respondentauthorities that the abovenoted arrangement as incorporated in the award of the Collector is strictly legal and intra vires. It is also not their case that the same is not binding on them. If that be so, as it is, then merely by taking a policy decision not to carve out plots bigger than 500 sq. yards in area, the Government cannot possibly absolve itself of its liability under the abovenoted award or arrangement. The phrase "as far as possible" only means that the Government would stick or try to carry out the arrangement stated earlier unless it becomes impossible for it to do so (See Smt. Rani v. Deputy Director of Consolidation, Barielly, A.I.R. 1959 Allahabad 525). The abovenoted policy decision of the Government cannot amount to an "impossibility" in the matter of fulfilment of their obligations. In a nutshell, the Government cannot take protection under its own decision to the detriment of the petitioner. By taking this decision, the Government cannot possibly plead that now it is impossible for them to fulfil or carry out the above noted n Authority to comply with the mandatory provisions contained in Part VII of the Act and since these mandatory provisions were not adhered to the acquisition is void.

The respondents while resisting the writ petition denied that there was any delay in the publication of the substance of notification under section 4 of the Act in the locality. It was also denied that the Punjab State Electricity Board, respondent No. 3, is a Company as defined under section 3(e) of the Act and it was, therefore, contended that there was no need to comply with the provisions contained in Part VII of the Act. It was further contended that the petitioners having made a reference under section 18 of the Act for enhancement of compensation are barred from challenging the validity of the acquisition and further that the acquisition proceedings having been completed the petitioners are not entitled to claim any relief in this writ petition.

Admittedly the notification under section 4 of the Act was published in the

Government Gazette on September 14, 1982. The substance of its contents were published in the locality four days thereafter on September 18, 1982 which is evidenced from Annexure P.5. It is, therefore, clear that there was a delay of four days in the publication of substance of the notification under section 4 of the Act in the locality. The respondents have not offered any explanation for this delay. In view of the Full Bench judgment of this Court in Rattan Singh v. The State of Punjab, 1976 P.L.R. 545, it amounts to noncompliance with the mandatory requirement of section 4(1) of the Act which makes the acquisition bad in law. Relying upon the said Full Bench judgment a Division Bench of this Court held in Murari Lal Bhargava v. The State of Haryana and others, 1977 R.L.R. 337, as follows :

"Six days'' delay in the publication of the substance of the notification in the locality under section 4 of the Land Acquisition Act between July 1 and July 7 has not been explained in the written statement at all. Following the Full Bench judgment of the Court in Rattan Singh v. The State of Punjab, 1976 P.L.R. 545, we allow this petition on account of the noncompliance with the mandatory requirement of sections 4 of the Act and quash the notifications under section 4 and 6 of the Act."

The learned respondents'' counsel tried to draw support from a Division Bench judgment of this Court in Bishna alias Bishan Singh v. The State of Punjab and another, 1980 P.L.J. 510. However, the ratio of this judgment is entirely inapplicable to the present case. It was held in that judgment that if objections by interested persons under section 5A are filed within time in spite of delay in the publication of the substance of notification under section 4(1) of the Act in the locality and the delay in publication does not cause any prejudice to the landowners then the unexplained delay does not entitle the landowners to challenge the notification merely on the ground that the same was published in the locality after undue delay. Evidently, this judgment has no application to the facts of the present case. It is specifically alleged by the petitioners that on account of the delay in publication in the locality they were unable to file objections under section 5A of the Act. This allegation has not been controverted in the written statement. I am, therefore, of the view that the notifications under sections 4 and 6 of the Act in the present case are liable to be quashed on account of the unexplained delay in the publication of the substance of the notification under section 4 of the Act in the locality.

There is also ample merit in the contention of the learned petitioners'' counsel that respondent No. 3. Punjab State Electricity Board, Patiala, for which the land in dispute was acquired by the State Government, is a Company falling within the definition under section 3(e) of the Act and as such the noncompliance of the provisions of Part VII of the Act would render the acquisition of land illegal. In this context it is necessary to refer to the judgment of the Supreme Court in State of Punjab v. Raja Ram, 1981(2) Supreme Court Cases 66. In that case the Government had acquired the land for the Food Corporation of India. An objection was taken that this Corporation was a Company within the meaning of section 3(e) of the Act and, therefore, for acquisition of land for this Corporation provisions of Part VII of the Act must be complied with. This objection found favour with the Supreme Court and it was held that the Food Corporation of India was created by the statute i.e. Food Corporation Act, section 3(2) of which clothes the Corporation with the attributes of a Company. It was consequently ruled that the Corporation is a Company within the meaning of section 3(e). The provisions of section 3 of the Food Corporation Act, 1964, under which the Food Corporation was created, are almost identical with provisions of sections 5 and 12 of the Electricity Supply Act 1948, under which respondent No.3, Board, has been constituted. Section 3 of the Food Corporation Act is as follows :

"3.(1) With effect from such date as the Central Government may, by notification in the official Gazette, specify in this behalf, the Central Government shall establish for the purpose of this Act a Corporation known as the Food Corporation of India.

(2) The Corporation shall be a body corporate with the name, aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and may, by that name, sue and be sued."

6. Section 5(1) of the Electricity Supply Act is reproduced below :

"The State Government shall, as soon as may be after the issue of the notification under subsection (4) of section 1, constitute by notification in the Official Gazette a State Electricity Board under such name as shall be specified in the notification."

Section 12 of the same Act states as under :

"The Board shall be a body corporate by the name notified under subsection (1) of section 5, having perpetual succession and a common seal, with power to acquire and hold property both movable and immovable, and shall by the said name sue and be sued."

Thus, the mandate of the aforesaid Supreme Court judgment is applicable with full force to the acquisition of land for the Punjab State Electricity Board. Section 12 of the Electricity Supply Act clothes the Electricity Board with the attributes of a Company. Therefore, it cannot be urged on behalf of the respondents that the Board is not a Company within the meaning of the definition of that term appearing in section 3(e) of the Land Acquisition Act. The Board being a Company, the compliance with the provision of Part VII of the Act had to be necessarily made in order to lawfully acquire the land for its purpose. It is not denied that such compliance is lacking in the present case. On this account it must be held that the land in dispute has not been acquired in accordance with law.

7. The objection of the respondents is that the making of reference under section

18 of the Act by the petitioners for enhancement of compensation bars them from filing the instant writ petition. Such an objection was repelled by this Court earlier in Amolak Singh v. The Pathankot Improvement Trust, 1982 R.L.R. 452. Answering this objection it was observed in this judgment as follows :

"The learned counsel for the Trust has yet chosen to raise another objection by submitting that the petitioner has already chosen to avail of an alternative remedy in seeking reference under section 18 of the Act for enhancement of the compensation. It is admitted position that so far the Collector has not as a matter of fact made any reference to the Land Acquisition Court though the petitioner has filed an application in that behalf. Further I am of the considered opinion that that remedy cannot possibly be said to be an alternative remedy for the relief which is being claimed in this petition. In those proceedings only the adequacy of compensation payable to the petitioner is being challenged whereas in the present petition the petitioner is challenging the validity and legality of the notification itself."

Thus it becomes clear that the filing of a reference under section 18 of the Act for enhancement of compensation is not an alternative remedy for the petitioner challenging validity and legality of the acquisition and it has no bar to the entertaining of a writ petition to claim that the acquisition proceedings be quashed.

8. The contention of the learned respondents'' counsel that the completion of acquisition proceedings estops the petitioner from invoking the writ jurisdiction is equally untenable. There is no statute or legal pronouncement in support of this contention. The learned counsel cited a judgment of the Supreme Court in Babu Singh v. Union of India and others, A.I.R. 1979 Supreme Court 1713, to support his plea. However, this judgment is of no help to the respondents. In that case a writ petition challenging a notification under section 6 of the Act was filed nearly six years after the publication of the impugned notification and about five years after the award without offering any explanation for the inordinate delay after the entire process of acquisition was over. In those circumstances it was held that the writ petition was liable to be dismissed in limine on account of delay. The facts of the present case are quite different. The notification under section 4 was published on September 14, 1982 (Annexure P.1). The notification under section 6 was published on January 24, 1983 (Annexure P.2). The notice under section 9 was served on the petitioners to put in appearance before the Land Acquisition Officer on March 15, 1983 to file their claim for compensation (Annexure P.3) and the award was given on March 15, 1983 (Annexure P.4). This writ petition was filed on April 9, 1983, that is, soon after the award was given. It, therefore, cannot be said that the filing of the writ petition was delayed or that it suffered from laches.

9. As a result of what is stated above it must be held that the land in dispute has been not acquired in accordance with law. Consequently, this writ petition is allowed and notifications Annexures P.1 and P.2 notice Annexure P.3 and award

Annexure P.4 are quashed. The petitioners are also entitled to the costs of this litigation which I assess at Rs. 500/

