
(1970) 04 SC CK 0074

In the Supreme Court Of India

Case No : Civil Appeal No. 514 of 1967

Lt. Governor of Himachal Pradesh and Another

APPELLANT

Vs

Avinash Sharma

RESPONDENT

Date of Decision : 28-04-1970

Acts Referred:

General Clauses Act, 1897 — Section 21

Land Acquisition Act, 1894 — Section 17(1), 17(4), 4, 48, 6

Citation : AIR 1970 SC 1576 : (1970) 2 SCC 149 : (1971) 1 SCR 413

Hon'ble Judges : K. S. Hegde, J; J. C. Shah, J

Bench : Division Bench

Advocate : Jagadish Swarup, B.C. Mohajan and R.N. Sachthey, for the Appellant; Bishan Narain and O.N. Mahindroo, for the Respondent

Final Decision : Allowed

Judgement

J.C. Shah, J.—The Deputy Commissioner, Mahasu, apparently acting on the request of the Air Force authorities took possession on December 23, 1963, of an area of land in village Galu Chak. That area included 8-14-0 bighas belonging to the respondent. The record does not disclose the authority under which possession of the land was taken and delivered over to the Air Force. There was correspondence between the Air Force Authorities and the State of Himachal Pradesh in regard to the land occupied by the Air Force and ultimately on March 31, 1964, a notification u/s 4 of the Land Acquisition Act, 1894, was published notifying that the area of land (including the land of the respondent) was likely to be needed by the State Government for a public purpose. By a composite notification u/s 6 & Section 17(1) & (4) dated May 16, 1964, 'the State of Himachal Pradesh declared that the land was needed for a public purpose, that since it was required urgent, the enquiry u/s 5-A of the Act was dispensed with, and that possession of the land will be taken u/s 17(1) of the Act after the expiry of fifteen days from the publication of the notice u/s 9(1) of the Act. The Collector of Mahasu then served notices u/s 9 of the Land Acquisition Act in June 1964. On October 5, 1965, the Government of Himachal Pradesh published an

order cancelling the notification dated March 31, 1964, and May 16, 1964, for acquisition of land for a public purpose.

2. The respondent then presented a petition before the Judicial Commissioner, Himachal Pradesh, for a writ quashing the notification dated October 5, 1965, withdrawing and cancelling the previous notifications and for a writ of mandamus directing the authorities of the State Government to act according to law and discharge the duties cast by law upon them in the matter of determination of compensation for compulsory and urgent acquisition. The petition was granted by the Judicial Commissioner. In the view of the Judicial Commissioner when the notification u/s 17(1) & (4) was issued, and possession was taken by the State Government the land vested in the Government and it was not competent to the State Government thereafter to withdraw the notifications in exercise of the power u/s 48 of the Land Acquisition Act. Against the order of the Judicial Commissioner, this appeal has been preferred with special leave,

3. The Solicitor-General appearing on behalf of the State contended that u/s 21 of the General Clauses Act the State has the power to cancel the notifications at any time, and that Section 48 of the Land Acquisition Act did not trench upon that power. Under the Land Acquisition Act a notification u/s 4 of the Act may be issued by the appropriate Government that any land is needed or is likely to be needed for a public purpose. Unless the inquiry u/s 5-A is dispensed with, any person interested in the land notified may object to the acquisition of the land, or of any land in the locality. On the objections made, the Collector holds an inquiry after giving the objector an opportunity of being heard, and makes a report. The appropriate Government may, if satisfied, after considering the report, if any, of the Collector u/s 5-A(2), make a declaration that the land is needed for a public purpose. The declaration is conclusive evidence that the land is needed for a public purpose. Then follows an inquiry as to the amount of compensation payable to the owner of the land, and to the other claimants. If the land is waste or arable, the Government may in case of urgency dispense with the inquiry u/s 5-A and direct that possession may be taken on the expiration of fifteen days after publication of the notice u/s 9(1) of the Act even though no award of compensation is made by the Collector. When possession is taken the land vests exclusively in the Government free from all encumbrances.

4. In the present case a notification u/s 17(1) and (4) was issued by the State Government and possession which had previously been taken must, from the date of expiry of fifteen days from the publication of the notice u/s 9(1), be deemed to be the possession of the Government. We are unable to agree that where the Government has obtained possession illegally or under some unlawful transaction and a notification u/s 17(1) is issued the land does not vest in the Government free from all encumbrances. We are of the view that when a notification u/s 17(1) is issued, on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1), the possession previously obtained will be deemed to be the possession of the Government u/s 17(1) of the

Act and the land will vest in the Government free from all encumbrances.

5. It is true that the notification issued by the State of Himachal Pradesh u/s 17(1) & (4) does not recite that the land notified was "waste or arable". But it was not contended before the Judicial Commissioner that the Government issued the notification u/s 17(1) & (4) without authority. Power under Sub-Sections. (1) & (4) of Section 17 may be only exercised when the land is waste or arable, and the Government having issued the notification, it is not open to them to contend for the first time at this stage that the land of the respondent was not waste or arable and the notifications were unauthorised.

6. Section 48 of the Land Acquisition Act by the first Subsection provides :

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.

Power to cancel a notification for compulsory acquisition is, it is true, not affected by Section 48 of the Act: by a notification u/s 21 of the General Clauses Act, the Government may cancel or rescind the notifications issued under Sections. 4 & 6 of the Land Acquisition Act. But the power u/s 21 of the General Clauses Act cannot be exercised after the land statutorily vests* in the State Government.

7. In *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, on which reliance was placed, the only question which fell to be considered by the Court was whether a notification u/s 4(1) may be followed by successive notifications u/s 6 for small parts of the land comprised in one notification issued u/s 4. The Court rejected the contention that the State was invested with such a power. In considering the argument the Court referred to the power to cancel the notification u/s 21 of the General Clauses Act, apart from the power conferred by Section 48 of the Land Acquisition Act. The Court observed :

Section 48(1) is a special provision for those cases where proceedings for acquisition have gone beyond the stage of the issue of notice u/s 9(1) and it provides for payment of compensation u/s 48(2) read with Section 48(3). We cannot ... accept the argument that without an order u/s 48(1) the notification u/s 4 must remain outstanding. It can be cancelled at any time by Government u/s 21 of the General Clauses Act and what Section 48(1). If no notice has been issued under possession it cannot withdraw from" the acquisition. Before that it may cancel the notification under Sections. 4 and 6 or it may withdraw from the acquisition u/s 48(1). If no notice has been issued u/s 9(1) all that the government has to do is to pay for the damage caused as provided in Section 5; if on the other hand a notice has been issued u/s 9(1), damage has also to be paid in accordance with the provisions of Section 48(2) and (3).

But these observations do not assist the case of the appellants. It is clearly implicit in the observations that after possession has been taken pursuant to a notification u/s 17(1) the land is vested in the Government, and the notification

cannot be cancelled u/s 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers u/s 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power. When possession of the land is taken u/s 17(1), the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification.

8. The appeal fails and is dismissed with costs.