
(2006) 08 P&H CK 0250
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 12283 of 2006

Luxmi Narain and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 08-08-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226

Land Acquisition Act, 1894 — Section 17(1), 17(2), 17(4), 4, 4(1)

Citation : (2007) 146 PLR 811 : (2007) 1 RCR(Civil) 863

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Advocate : Arun Jain, for the Appellant;

Final Decision : Dismissed

Judgement

Mahesh Grover, J.—In the present petition filed under Article 226 of the Constitution of India, a challenge has been made to the acquisition proceedings initiated by the respondent-State by invoking the urgency provisions as contained in Section 17(2)(c) of the Land Acquisition Act, 1894 (for short, 'the Act').

2. A notification u/s 4 of the Act was issued on 5.12.2005 and a huge chunk of land measuring 8129 kanals and 3 marlas (1016 acres, 1 kanal and 3 marlas) was sought to be acquired for a public purpose, namely, "Industrial, recreational, and other public utility services and to develop an integrated Industrial Complex in a planned manner and for extension of Industrial Development Centre, Bawal, by Haryana State Industrial Development Corporation Limited in Jaliawas, Asalwas, Suthani, Karnawas, Suthana, Chirhara, Banipur, Bawal, Fatuhera, Tehsil Bawal, District Rewari. The above notification was followed by another notification dated 13.3.2006 issued u/s 6 of the Act.

3. The petitioners, who claim to be the owner in possession of some of the acquired land, have challenged the aforementioned notifications on the ground

that they are having shops in the area owned by them which are depicted from the photographs on record and that the notifications do not disclose any such urgency which would warrant the dispensing of hearing of objections u/s 5-A of the Act.

4. Shri Arun Jain, learned Counsel for the petitioners contended that the very fact that notification u/s 4 of the Act was issued on 5.12.2005 and the notification u/s 6 of the Act had been issued on 13.3.2006, i.e. after more than three months shows no urgency which is also borne out from the purpose of the acquisition. Shri Jain urged that the inordinate delay in between the issuance of two notifications should be taken as a reflection of the fact that there is no urgency to acquire the land in question and that the provisions of Section 17(1) and (2) of the Act have been invoked in a mala fide manner. He contended that the right to file objections is akin to a fundamental right and cannot be taken away and interfered with lightly. Learned Counsel submitted that since the action of the State has resulted in depriving the petitioners of an opportunity to file objections, the impugned notifications may be quashed. In support of his contentions, learned Counsel relied upon the judgment of the Supreme Court reported as 2004 (3) R.C.R. 178 wherein it was held as under:

27. In *Om Prakash and Another Vs. State of U.P. and Others*, referring to *State of Punjab v. Gurdiyal Singh* (supra), this Court in para 21 has observed that 'according to the said decision, inquiry u/s 5-A is not merely statutory but also has a flavour of fundamental rights under Articles 14 and 19 of the Constitution though right to property has no longer remained a fundamental right, at least observations regarding Article 14 vis-a-vis Section 5-A of the Land Acquisition Act would remain apposite.' In the present appeals, the appellants have not been able to show before the High Court any relevant material available to the State authorities at the time when they issued the impugned notification u/s 4(1) of the Act and dispensed with Section 5-A inquiry taking aid of Section 17(4) of the Act. A Bench of three learned Judges of this Court in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, has expressed that Section 17(4) cannot be read in isolation from Sections 4(1) and 5-A of the Act and has expressed that having regard to the possible objections that may be taken by the land owners challenging the public purpose, normally there will be little difficulty in completing inquiries u/s 5-A of the Act very expeditiously. In the same judgment, it is also stated that 'that mind of the officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings u/s 5-A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry u/s 5-A which has to be considered.

5. Having considered the contentions of the learned Counsel and perused the record, we are of the opinion that the writ petition deserves to be dismissed. Sub-sections (1) and (2) of Section 17 of the Act are reproduced below for ready reference:

17. Special powers in cases of urgency.-(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notification mentioned in Section 9, Sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

Explanation.- This sub-section shall apply to any waste or arable land, notwithstanding the existence therein of scattered tress or temporary structures, such as huts, pandals or sheds.

(2) In the following cases, that is to say, --

(a) Whenever owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station;

(b) whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land for the purpose of any library or educational institution or for the construction, extension or improvement of any building or other structure in any village for the common use of the inhabitants of such village, or any godown for any society registered under the Co-operative Societies Act, 1912, or any dwelling house for the poor, or the construction of labour colonies or houses for any other class of people under a Government sponsored housing scheme, or any irrigation tank, irrigation or drainage channel, or any well, or any public road;

(c) whenever land is required for a public purpose which in the opinion of the appropriate Government is of urgent importance,

the Collector may, immediately after the publication of the notice mentioned in Sub-section (1) and with the previous sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours" notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

6. As far as the contention regarding there being urgency or not, we feel that the same is devoid of any merit. This is subjective satisfaction of the State authorities and the Court cannot interfere in this regard. In a judgment reported as 1996 (2) I C C 50 Union of India and Ors. v. Shri Ghanshyam Dass Kedia and Ors., their Lordships of the Supreme Court held:

the High Court is not a court of appeal over subjective satisfaction and the opinion of the government is entitled to great weight. Therefore, it cannot be said that the notification should specially recite the nature of the urgency. It is enough, if the record disclosed the consideration by the Government on urgency for taking action under Sections 17(1) and (2).

7. In another judgment reported as 2003(2) Indian Civil Cases 520 -First Land Acquisition Collector and Ors. v. Nirodhi Prakash Gangoli and Anr., their Lordships of the Supreme Court observed as under:

The question of urgency of an acquisition u/s 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily, it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In this view of the matter, when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers u/s 17(1) and (4) of the Act, and issues notification accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority mala fide...

8. The second contention of the learned Counsel for the petitioners that notification u/s 6 of the Act has been issued after a lapse of about three months and that there has been inordinate delay in the issuance of this notification is also without any substance when we take a cursory look to the dictum of their Lordships of the Supreme Court in First Land Acquisition Collector and Ors. v. Nirodhi Prakash Gangoli and Anr. (supra), wherein it was observed that any post-notification delay subsequent to the decision of the State Government dispensing with an enquiry u/s 5-A by invoking powers u/s 17(1) of the Act would not invalidate the decision itself specifically when no mala fide on the part of the Government or its officers is alleged. In the instant case, there has been no allegation that the State has acted with mala fide intention in issuing the impugned notifications.

9. On the basis of above discussion, we are of the opinion that the writ petition is without any merit and no case for interference by this Court with the impugned notifications has been made out. Accordingly, the writ petition is dismissed.