

(1974) 08 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 333 of 1974

Mahal Singh Ujagar Singh and others	APPELLANT
Vs	
The State of Punjab and others	RESPONDENT

Date of Decision : 19-08-1974

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 4(1), 4(2), 40, 5A

Citation : (1974) 08 P&H CK 0020

Hon'ble Judges : R.S. Narula, C.J.; M.R. Sharma, J

Bench : Division Bench

Advocate : Y.P. Gandhi, for the Appellant; M.M. Punchhi for Advocate-General Punjab, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Narula, C.J.—The pivotal point which was pressed before the learned Single Judge and has again been pressed before us in this appeal against the dismissal of the appellants' petition under Article 226 of the Constitution is that the notification, dated October 1, 1971, published in the Punjab Government Gazette on October 15, 1971, u/s 4 of the Land Acquisition Act, 1894 (hereinafter called the Act), was not valid, inasmuch as it did not set out information sufficient to give notice to the owners of the land that their properties were intended to be compulsorily acquired, and, therefore, the entire subsequent acquisition proceedings founded on the said invalid notification should be held to be non est, as the publication of a valid notification u/s 4 is the sine qua non to the exercise of any further power for acquisition of land under the Act. The notification (Annexure "A" to the writ petition) sets out that:-

Whereas, it appears to the President of India, that land is likely to be required to be taken by Government, at public expenses, for a public purpose namely for excavating Naraingarh Link Drain, from R.D. 39420 to R.D. 59000 (far full width in reach R.D. 39420 to R.D. 43300, R.D. 44800 to R.D. 45500 and RD. 43000 to

R.D. 59000) and for left half width in the remaining reaches in tahsil and district Patiala, it is hereby notified that the land in the locality described below is likely to be required for the above purpose.

In the fourth paragraph of the notification it is stated that any person interested who has any objection to the acquisition of any land in the locality may within 30 days of the publication of the notification file objections in writing before the Collector, Land Acquisition Office, Drainage Circle, Patiala. The details of the land sought to be covered by the notification are then specified in Annexure "A" It gives the name of the district, the name of the tahsil the name of the village, the area in acres sought to be acquired, the khasra numbers of the land, and a description of the land to be acquired in the following words:-

A strip of land 19,580 feet in length and of varying widths generally lying from, south-west to north-east direction as demarcated at site and as shown on the Index Plan.

2. The appellant's objection was pressed on three grounds, namely:-

(i) the precise portions of the Land comprised in the khasra numbers have not been mentioned in the notification;

(ii) village Fatehgarh Chhana from which 8.59 acres of land are sought to be covered by the notification has been described therein as forming part of tahsil Patiala in district Patiala whereas in fact it had by the time of the notification been made a part of tahsil Samana in district Patiala; and

(iii) public notice of the substance of the notification had not been given in the village of the appellants so as to enable the appellants to file objections u/s 5A of the Act.

While repelling each of the abovementioned objections of the appellants, the learned Judge in Chambers held that the perusal of the original record showed that the notification had been proclaimed in the village of the appellants, and the endorsement about the proclamation having been issued in that village was even signed by Bach an Singh and Budh Singh appellants. The original record was again shown to us by the State counsel The correctness of this finding of fact by the learned Single Judge was not questioned before us, but it was sought to be agitated that the signatures of all the appellants should have been obtained on the notification as it is possible that some of them might have been out of the village on the date when the proclamation was made. There is no force whatever in this contention, firstly because it would be practically impossible to follow everyone of the large number of persons that may be interested in the land sought to be acquired under a notification u/s 4 of the Act, and had the requirement of the provision been as envisaged by Mr. Gandhi the learned counsel for the appellants, it would be very easy for the land-owners to delay the acquisition proceedings by merely proving that some of them were out of the village on the, date when the substance of the notification was proclaimed:

secondly, the appellants having in fact become aware of the notification within time, and having admittedly filed objections u/s 5A of the Act it is wholly immaterial whether some of them were or were not in the village at the time of the proclamation. Moreover, I have not been able to understand how the learned counsel for the appellants has got an impression that any law requires personal service of notice of the contents of the notification u/s 4 being effected on the interested land-owners. All that sub-section (1) of Section 4 of the Act requires in this respect is that the Collector should cause public notice of the substance of such notification to be given "at convenient places in the said locality". I am unable to spell out of the language of Section 4 (1) any requirement to serve notice of the contents of the notification on any particular Land-owner. The signatures of two of the appellants had been obtained merely as evidence of the substance of the notification having been proclaimed in the village of the appellants. That being so, the requirements of Section 4 (1) as regards giving the public notice of the substance of the notification in the locality have been fully satisfied in this case.

3. Similarly, the learned Judge was, in our opinion, correct in repealing the objection of the appellant to the effect that the non-specification" of the exact portions of the khasra numbers or non-mentioning of the names of the owners of the khasra numbers resulted in any prejudice to the appellants. Firstly, it is not necessary that the exact strip of land to be ultimately acquired u/s 6 of the Act should be specified with meticulous details in the notification u/s 4. The quantification of the land and the specification of the exact, portions sought to be acquired is expected to be made u/s 4 (2) of the Act after the issue of the notification u/s 4 (1). Section 4 (2) states that upon, the issue of the notification under sub-section (1) of that section, it would be lawful for any officer authorised by the Government to enter upon and survey and take levels of any land in such locality; "to dig or bore into the subsoil; to do all other acts necessary to ascertain whether the land is adapted for such purpose; and "to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon", besides marking such levels, boundaries and alignments by placing marks and cutting trenches. This provision itself shows that in the nature of things the exact boundaries of the land proposed to be taken can be found out and marked at the site under sub-section (2) of Section 4 only after the issue of the notification under sub-section (1) of that section. Secondly, in this particular case there is no doubt that the appellants were aware of the fact that their land was involved in the proposed acquisition covered by the notification u/s 4, and that is why they actually preferred objections u/s 5A.

4. The third objection as to the label of the name of a wrong tahsil having been used for describing the village of the appellants is also meaningless as it is not the case of the appellants that there is any village by the name of Fatehgarb Chhana in tahsil Patiala. A similar objection has been raised in the connected case, that is Civil Writ 1660 of 1974 (Punj.), Hazara Singh v. The State of Punjab,

regarding the notification under Section 4 of the Act, dated October 3, 1972, for acquiring a strip of land measuring 20,920 feet in length and of varying widths generally lying from east to west as demarcated at site wherein khasra numbers of the land are given. Village Ghanour Jattan in which part of the land covered by that notification is situated has been described therein as being in tahsil Sangrur. An objection has been taken in that writ petition about the said village being in fact a part of tahsil Sunam. In reply to that objection it has been stated in paragraph 1 of the affidavit of the Executive Engineer, Drainage Construction Division, Sangrur, filed in that case that village Ghanour Jattan was in tahsil Sangrur at the time of the preparation of the land acquisition papers, but subsequently due to creation of a new tahsil at Sunam, that village later became part of that new tahsil. As already stated the notification in that case is of October 3, 1972. The notification in the instant case was published on October 15, 1971. The abovementioned averment in the written statement of the Government in the connected case shows that tahsil Sunam did not exist earlier and had been carved out sometime in 1971-72. It has not been disputed by the learned counsel for the appellants that the village of the appellants was originally in tahsil Patiala, and that it has become part of tahsil Sunam only after this new tahsil was carved out. The mere fact, therefore, that at the time of filing the writ petition or even earlier at the time of filing the objections u/s 5A of the Act, village Fatehgarh Chhana was part of Sunam tahsil does not make the least difference when the said village was admittedly a part of tahsil Patiala earlier. The object of giving sufficient particulars of the property in a notification u/s 4 (1) of the Act so as to identify the property is that the owners thereof may have notice of the proposed acquisition proceedings so that they may, if they so desire, prefer objections u/s 5A. Once it is not disputed that the appellants not only came to know of the notification, but also preferred all possible objections u/s 5A within time, the hyper technical objection as to misdescription of the village which existed in only one of the two tahsils loses all its importance.

Mr. Y.P. Gandhi, the learned counsel for the appellants, cited before us the judgments of the Supreme Court in *Khub Chand and Others Vs. State of Rajasthan and Others*, and in *Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others*, and the Full Bench judgment of the Allahabad High Court in *Bahori Lal Vs. Land Acquisition Officer and Others*, as well as the judgment of a learned Single Judge of this Court (R.S. Sarkaria, J.) in *Messrs. New Ludhiana Industrial Corporation v. The State of Punjab etc.*, 1971 Cur LJ 436, in support of the proposition that a notification u/s 4 which does not set out sufficient information required by the land-owners is not a valid notification. There is no quarrel with that proposition of law, but it has to be seen in each case whether there has in fact been any material defect in the notification u/s 4 so as to deprive any landowner of his right to prefer objections u/s 5A or if there is only some hypertechnical defect in the notification which neither goes to the root of the matter, nor affects the rights of any person. We asked Mr. Gandhi if he could cite a single case before us in which any defect of the kind pointed out

in the present case was held to invalidate the acquisition proceedings in spite of the fact that the affected person had actually preferred all possible objections against the notification. He was unable to cite any such case. On the other hand Mr. M.M. Punchhi, the learned counsel for the State, placed before us the observations of their Lordships of the Supreme Court in Babu Barkya Thakur Vs. The State of Bombay and Others, wherein it has been held that defect in a notification u/s 4 is not fatal to the validity of the acquisition proceedings when the purpose of acquisition has been investigated u/s 5A (or in the case of acquisition for a company u/s 40) after the notification u/s 4. The judgment of the Supreme Court in Babu Barkya Thakur Vs. The State of Bombay and Others, in our opinion, concludes the issues raised before us. In this view of the matter it is impossible to find any fault with the judgment of the learned Single Judge which is affirmed and the appeal is dismissed though without any order as to costs.

M.R. Sharma, J.

5. I agree.