
(1972) 04 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 4277 of 1971

Mayapati and Another

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 26-04-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 3, 4, 5
Punjab Land Revenue Act, 1887 — Section 27(1)
Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 2
Punjab Tenancy Act, 1887 — Section 105

Citation : AIR 1973 P&H 356

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

Bench : Single Bench

Judgement

1. Two points have been canvassed in this petition brought under Articles 226 and 227 of the Constitution for impugning the notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter called the Act):--

(1) That in the impugned notifications, it was not stated that the land which was being acquired consisted of lease-hold rights belonging to the petitioners.

(2) That Shri Jagbir Singh, General Assistant to the Deputy Commissioner, had no jurisdiction to entertain and hear the objections u/s 5A of the Act inasmuch as he was not appointed by the Government to perform the functions of Collector under the Act.

2. There appears to be no force in contention (1).

3. All that Section 4 requires is that the locality with reference to the land likely to be acquired should sufficiently be indicated in the notification u/s 4 so that all persons interested in the land may get notice of the proposed acquisition and prefer objections if necessary against the intended acquisition. In the impugned notification not only the locality but also the land likely to be acquired has been sufficiently described by survey numbers. In the impugned declaration u/s 6 also

full particulars of the land, namely, the field numbers and their area are given of course it is not mentioned there that the lease hold rights of the petitioners, are being acquired. particularisation of the land itself, was sufficient to meet the requirements of the law. The particular interest of the petitioners would be relevant only for the purpose of assessing the compensation. By no stretch of reasoning, therefore the impugned notifications can be said to be bad for non-specification of the interest held by the petitioners in it.

4. As regards contention (2) the plea has been taken up specifically in para 12 and again in para 18(h) of the writ petition. In the written statement filed by the Respondent-State, it is not specifically averred that the aforesaid General Assistant (Shri Jagbir Singh) was ever appointed to perform the functions of the collector under the Act. All that is stated, in reply to para 12 is "para 12 in so far as it concerns the Respondent No. 3 is admitted. The rest of the para concerns Respondent No. 2. It may, however, be added that the father of the petitioner or the petitioners never raised any point before the General Assistant, who is also the Land Acquisition Collector. Gurgaon with regard to his jurisdiction to hear objections u/s 5A and hence they are estopped to challenge his jurisdiction. General Assistant to Respondent No. 2 is also the Land Acquisition Collector, Gurgaon as is evident from Annexure filed by Respondent No. 3."

5. Similar is the reply to para 18(h). It will be seen, while respondent 1 has evaded to answer the point of substance in para 12 of the writ petition by saying that it concerns Respondent 2 (Collector District Gurgaon), the latter has filed no return at all.

6. Mr. Ashok Bhan, learned counsel for the respondents has been unable to refer to any notification whereby the Government appointed the General Assistant to the Deputy Commissioner, Gurgaon, as a Collector for the purposes of the Act. The expression "collector" has been defined in Section 3(c) of the Act which says:--

"The expression "Collector" means the Collector of a district and includes a Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of a Collector under this Act."

In Major S. Arjan Singh and Another Vs. The State of Punjab and Others, the facts were that the Government Notification stated that a person was appointed as "officiating Land Acquisition Officer" but it did not state that he was so appointed to perform the functions of a Collector under the Act and that person after taking proceedings u/s 9 and 10 gave an award u/s 11 of the Act. The proceedings were challenged by a writ petition in the Punjab High Court, Bishan Narain J. held:--

"That the officer not having been appointed to perform the functions of a collector under the Act had no jurisdiction to take proceedings under Ss. 9 and 10 or give an award. Therefore, the proceedings as well as the award were invalid."

Similarly, in Civil Writ No. 1747 of 1964 (Punj) (Gajjan Singh v. Commr. Ambala Division). I had the occasion to consider the definition of the "Collector" in Section 2(a) of the Punjab Premises and Land (Eviction and Rent Recovery) Act, 1959, which is substantially the same as the one given in Section 3(c) of the Land Acquisition Act. The question was whether an Additional Deputy Commissioner or Additional Collector of the District, on whom the Government in exercise of its powers under Sub-section (1)(a) of Section 27 of the Punjab Land Revenue Act, 1887 and sub-section (1)(a) of Section 105 of the Punjab Tenancy Act, 1887 confers the powers of a collector to hear and determine appeals from the orders, and decrees of Assistant Collectors of the 1st and 2nd grades, falls within the definition of Collector given in the Punjab Act, 1959. It was held:--

"All the powers of the Collector of the District were not conferred on him. He was not a full-fledged "Collector of the District" in the sense in which the expression is used in Section 2(a) of the Act.

7. In the result, the order of the officer concerned was struck down. In Gajjan Singh's case, Civil Writ No. 1747 of 1964 (punj) (supra) it was contended, as it has been done before me in the instant case, that this objection with regard to lack of jurisdiction was not taken before the officer concerned and consequently the petitioner was precluded from raising it for the first time in this Court. The contention was repelled in these terms:--

"This objection as to jurisdiction goes to the very root of the matter. It is purely a law point. It is, therefore, allowed to be raised now. It is well settled that even consent of the parties cannot cure inherent lack of jurisdiction in a tribunal"

If further authority is needed, the law on the point as expounded by the Supreme Court, Abdul Husein Tayabali and Others Vs. State of Gujarat and Others, , may be studied with advantage. These observations are a complete answer to the plea raised by the Respondent State in reply to paras 12 and 18(h) of the writ petition.

8. For the foregoing reasons, I have no hesitation in holding that the proceedings conducted by the General Assistant to the Deputy Commissioner, Gurgaon, u/s 5A of the Act, were without jurisdiction. The making of a valid report after hearing objections of the persons interested in the land u/s 5A, by a person who is duly constituted Collector within the meaning of Section 3(c) of the Act, being a sine qua non all further proceedings, the notification made u/s 6 on the basis of the illegal report of such an officer lacking inherent jurisdiction, will also be vitiated. In the result, I allow this writ petition and quash the impugned proceedings including the report made by the General Assistant to the Government and the impugned notification issued u/s 4(1), however, holds good and it is open to the collector of the District to rehear the objections filed by the petitioners u/s 5A and proceed further in accordance with law. The petitioners shall have their costs from Respondent 1. Counsel's fee: Rs. 50/-.

9. Petition allowed.