
(1993) 02 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1601 of 1991

Mohd. Salim and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 24-02-1993

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5

Citation : AIR 1994 P&H 189

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : S.S. Bhatia, for the Appellant; S.C. Nagpal and Arihan Jain, A.A.G., for the Respondent

Judgement

1. On a request made by the Punjab Water Supply and Sewerage Board (hereinafter referred to as "the Board"), the State of Punjab by a notification dated August 12, 1991 acquired 7 kanals and 18 marlas of land belonging to the petitioners for a public purpose, namely, for the purpose of the construction of Disposal Works by the Board in Malerkotla, Tehsil Malerkotla, District Sangrur under the Punjab Urban Renewal Project. This notification was issued under S. 4 of the Land Acquisition Act, 1894 (for short, "the Act") Further, in exercise of the powers under the Act, the State Government directed that action under S. 17(2) shall be taken in this case on the ground of urgent importance of the public purpose and it was also directed that the provisions of S. 5A of the Act shall not apply in regard to this acquisition. The declaration under S. 6 of the Act was made by another notification issued in the same day. Both these notifications were impugned in the present writ petition.

2. One of the grounds on which the notifications were challenged was that these had been issued on the same day which was in contravention of the mandatory provisions of sub-sec. (4) of S. 17 of the Act. During the pendency of the petition, the State Government withdrew the notification issued under S. 6 of the Act and issued a fresh one under the same provisions on August 11, 1992.

Petitioners were then allowed to amend the petition to challenge the subsequent notification. The ground that both the notifications were issued on the same day, therefore, no longer survives,

3. It was strenuously urged on behalf of the petitioners that the notification issued under S. 4 is, on the face of it, in contravention of the provisions of sub-sections (1) & (2) of S. 17 of the Act inasmuch as it does not mention that the land sought to be acquired was waste or arable nor does the notification state that in the opinion of the Government there was an urgency to take recourse to the provisions of S. 17. The other ground on which the acquisition proceedings have been challenged is that the Collector did not give any public notice at convenient places on or near the land sought to be acquired and nor did he invite claims to compensation.

4. As per the explanation added to sub- sec. (1) of S. 17 of the Act in the State of Punjab the said sub-section applies only to waste and arable land in the State. Action in the instnat case seems to have been taken under sub-section (2)(b) read with sub-section (4) and not under sub-section (1) of Section 17. By a State amendment, sub-section (2) qf S. 17 as applicable in the State pf Punjab reads as under :

"Section 17(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 riverside or ghat station, or of providing a 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 inhabitants of such village, or any godown for any society registered under 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 subsection (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."

It has been held by R. S. Sarkaria, J. in *Satnam Singh v. State of Punjab* (1969) 71 PLR 345 that S. 17 as a whole is an integrated and interdependent provision and its various sub-sections being inter-woven have to be construed together. It was further held that sub-sec. (2)(b) could not be read in isolation and it was subject to sub-sec. (1). The learned Judge after examining the contention that sub-sec. (2) of S. 17 was not confined to waste or arable land and was applicable to "any land" held as under :--

"Thus construed it is quite clear that the meaning of the words "any land" in clause (b) of sub-sec. (2) is to be restricted to "any waste or arable land referred to in sub-section (1) of section 17 of the Act."

In the light of the interpretation placed on S. 17 as applicable in the State of Punjab, it is clear that both sub-sees. (1) and (2) of S. 17 relate to waste and arable land. It was, therefore, necessary for the State Government to have stated in the notification whether the land sought to be acquired was waste or arable. Since the notification did not mention this material fact, it has to be necessarily quashed as was done by their Lordships of the Supreme Court in *Dora Phalauli Vs. State of Punjab and Others*,).

5. Again, the urgency provisions were invoked and the State Government directed that the provisions of S. 5A of the Act would not apply. The exact words used in the notification are as under:--

"Further in exercise of the powers under the said Act, the President of India is pleased to direct that action u/s 17(2) shall be taken in this case on the ground of urgent importance of the public purpose and provisions of S. 5A shall not apply in regard to this acquisition."

A plain reading of sub-section (4) of S. 17 of the Act makes it clear that the State Government can direct that provisions of S. 5A shall not apply in the case of land to which, in the opinion of the Government, the provisions of sub-section (1) or sub-section (2) of S. 17 are applicable otherwise not. For making the provisions of sub-section (2) applicable, two conditions must be satisfied -- (i) that the land in respect of which urgency provisions are invoked is waste or arable and (ii) that there is urgency to proceed in the matter of taking immediate possession. In the portion of the notification extracted above, it is neither mentioned that land is waste or arable nor has it been stated that in the opinion of the Government there was urgency to take recourse to the provisions of S. 17. No doubt, a direction has been given to the Collector to take action under S. 17 on the ground of urgency but this by itself is not a complete requirement of law. The right of a land owner to file objections is a valuable right and should not be interfered with except in cases where the need is urgent and that too after strict

compliance of the provisions of the Act. A somewhat similar notification was quashed by their Lordships of the Supreme Court in Dora Phalauli's case (supra).

6. Counsel for the petitioners also contended that the Collector had not issued any public notice under sub-section (1) of S. 9 of the Act. This fact stands admitted by the State Government in the written statement filed to the unamended writ petition. Learned Assistant Advocate General appearing for the respondent-State after receiving instructions from the departmental officials who were present in court also stated that the Collector had not given any public notice. If this is so, I fail to understand how the Collector could take possession under S. 17(2) of the Act. Issuance of a notice under sub-section (1) of S. 9 of the Act is a condition precedent and this not having been done, the acquisition proceedings will have to be quashed.

7. No other point was raised.

8. For the reasons recorded above the writ petition is allowed and notification dated August 17, 1991 issued under S. 4 of the Act is quashed leaving the parties to bear their own costs. It will, however, be open to the respondents to proceed afresh in accordance with law.

9. Petition allowed.