
(1971) 03 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 101 of 1970

Nand Gopal and Others

APPELLANT

Vs

Land Acquisition Collector and Others

RESPONDENT

Date of Decision : 17-03-1971

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 16, 47

Citation : AIR 1971 HP 1

Hon'ble Judges : M.H. Beg, C.J

Bench : Single Bench

Advocate : S. Malhotra, for the Appellant; B. Sitaram, for Nos. 1 to 3 and M.G. Chitkara, for No. 4, for the Respondent

Final Decision : Dismissed

Judgement

M.H. Beg, C.J.—The petitioners, before me, under Article 226 of the Constitution of India are old tenants in occupation of a property known as the Metro-pole Hotel Estate at Simla. On 16th March, 1968, a notification under Sec. 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") dated 2nd February, 1968. was published in the official gazette showing that this property was to be acquired, proceedings under Sections 5-A and 6, and, thereafter, an award dated 30th October, 1969, u/s 11 of the Act took place in accordance with law. These proceedings are not challenged by the petitioners. The opposite party No. 1 is the Land Acquisition Collector of Simla who, after the above-mentioned proceedings, authorized his Naib-Tehsildar, opposite party No. 2, to take possession of the property acquired for a public purpose as indicated above. Opposite party No. 3 is the Secretary to the Public Works" Department of the Government of Himanchal Pradesh. Opposite party No. 4 is the former Manager of the Metropole. Hotel apparently supporting the case of the petitioners whose objections are confined to what took place after the 9th of March, 1970. The petitioners" case is that whatever was legally possible for the Land Acquisition Collector, opposite party No. 2, to do tinder the law had been done on 9th March,

1970. and, thereafter, the further steps taken by opposite party No. 1 through opposite party No. 2 or otherwise are illegal and must be quashed. I may here indicate what took place on and after 9th March, 1970.

2. On 9-3-1970, three documents were executed (Annexures A, B and C). The first of these (Annexure A) merely seems to give the details of the property shown in the notifications under Sections 4 and 6 of the Act and indicates that it was handed over by the Manager and a co-owner to the Naib-Tehsildar, S. N. Pitra, opposite party No. 2. The next document dated 9th March, 1970 (Annexure B), executed by the former Manager and a co-owner shows that possession of room No. 22 and the Bar-room could not be handed over because certain goods belonging to the former owners were lying there, but it mentions that this accommodation will also be vacated in a day or two so that vacant possession of these rooms could be handed over. The third document of the same date (Annexure C) indicates that a list of tenants and details of accommodation in their occupation were also handed over by the former owners and the former Manager to S. N. Pitra, Naib-Tehsildar. A subsequent note in this very document shows that possession of Room No. 22 and of the Bar-room together with certain fittings were handed over on 26-3-1970. On 12th June, 1970, a letter (Annexure D) was sent by the Executive Engineer to certain tenants advising them to vacate the accommodation occupied by them as it was not safe for human habitation, and, informing them that, if they continued to remain in occupation, they could do so at their own risk.

After this, a general notice (Annexure F) dated 24th November, 1969, directing that the premises in question should be vacated and possession of it be delivered on 8th December, 1969, to the Naib-Tehsildar, was given. This notice purported to be a prelude to action by the Magistrate concerned u/s 47 of the Act. Finally, a series of individual notices, dated 30th July, 1970, were issued (Annexures E-I to E-V) directing persons occupying rooms in the Metropole Hotel, its annexe, or its servants' quarters to vacate within a week from the issue of these notices failing which other action was to be taken. The validity of these notices is challenged by the petitioners. The contention on behalf of the Land Acquisition Collector is that the notices, dated 30th July, 1970, have been issued in exercise of the magisterial power which the Collector can exercise u/s 47 of the Act, and that the opposite party No. 1 was given that power by the notification dated 14th August, 1969, which has been produced before me by the learned counsel for the Land Acquisition Collector.

3. I may here deal with a preliminary objection which has been put forward on behalf of the contesting opposite parties. The objection is that the petitioners have no locus standi as they have no legally enforceable right so that they cannot maintain this writ petition. It is contended that whatever rights they had as tenants came to an end when the award by the Collector, u/s 11 of the Act, was made. On the other hand, Mr. S. Malhotra appearing on behalf of the petitioners, has asserted that the petitioners have a right to continue in

possession until they are evicted in accordance with the procedure provided by law so that the petitioners have a procedural right to be protected so as to be able to maintain the petition. It seems to me the question whether the petitioners have or have not the right to continue in possession until notices are given to them under some other provision of law and they are evicted by ordinary suits in a civil Court by some other prescribed procedure is a question relating to the merits of the case.

If the petitioners could really make out even a right to procedural protection they would, in my opinion, be entitled to (succeed in the writ petition even if they have lost their rights as tenants. This was explained by me in *Ram Gopal Gupta Vs. Assistant Housing Commissioner and Others*, where it v/as observed, with regard to a mere procedural protection:--

"This procedural protection covers the propertied as well as the propertyless, the wronged as well as the wrong-doer, the citizen as well as the alien, the person who derives his right from a statute as well as the person who claims his right under the general law. the person who gets a right or incurs a liability by operation of law as well as one who traces it to a contract resulting from the free exercise of an option. It requires similar treatment for the similarly situated."

There, a Full Bench of the Allahabad High Court had relied upon the decision of the Supreme Court of India in *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, to hold that a person was entitled to obtain a writ, provided he could make out a procedural right, or, in other words, a right to remain in possession until evicted by procedure contemplated by law even if his substantive right had been lost.

4. The whole controversy in the present case revolves round the question whether Section 47 of the Act provides the procedure which can be adopted against the petitioners, and whether, in Issuing the notices on 30th July, 1970. that procedure was being followed. This is a question relating to the merits of the petitioner's case. I, therefore, overrule the preliminary objection.

5. Learned counsel for the petitioners submits that, on a correct interpretation of Section 16 of the Act, there is no power left to proceed u/s 47 at all after the Collector has already taken such possession of the property as he could. According to the learned counsel for the petitioners, this happened on 9th March, 1970. Section 16 of the Act reads as follows:--

"Power to take possession.-- When the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances."

The contention is that action contemplated by Section 16 of the Act having been taken on 9th March, 1970, the Land Acquisition Collector concerned was functus officio so that he had no power left thereafter to proceed u/s 47 of the Act. In other words, whatever power Section 47 confers was intended to be utilized

while taking possession contemplated by Section 16 of the Act and not thereafter. The contention is that, once possession is taken, whether it is actual or symbolical, the person who has continued to remain in wrongful possession after that must be evicted according to the ordinary procedure provided by law, for eviction of trespassers, and not by the special procedure laid down by Section 47 of the Act.

6. Section 16 of the Act is not happily worded. It certainly lays down that, after the Collector has made an award u/s 11. he has power to take possession of the land. But, after that, it does not lay down the procedure for taking possession as was pointed out by a Division Bench of the Patna High Court in *Jetmull Bhojraj Vs. The State of Bihar and Others*, The Act is, however, not completely silent about the procedure for taking possession. Section 47 provides for such difficulties as may arise hi taking actual possession, It provides:--

"Magistrate to enforce surrender:--If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and if not a Magistrate he shall apply to Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector."

7. It seems that opposite party No. 1 was hesitating to take extreme steps u/s 47 of the Act possibly because, as suggested by the learned counsel for the contesting opposite party, he was not aware that he possessed the magisterial power u/s 47 to enforce surrender. The question, however, which is mooted here, is whether the opposite party No. 1, even if he had been invested with the magisterial power u/s 47 of the Act, had any power left to proceed u/s 47 after 9th March, 1970. To support the contention that he had not such power left, reliance is placed on the words "shall thereupon vest", used in Section 16 of the Act, which, according to the learned counsel for the petitioners, must be read with the earlier words: "take possession".

It is, however, clear that even if vesting could be deemed to be postponed until actual or symbolical possession of land was taken. Section 16 of the Act does not limit the power of taking possession to any particular time or in a prescribed mode. It does not, for example, lay down where and how the Magistrate can use his power u/s 47 of the Act to enforce the surrender. Section 47 gives a power "to enforce surrender" or to procure surrender. It does not lay down either any particular mode of doing this or say that surrender must be obtained by taking any one particular step and nothing more. Nor does it prescribe any series of steps for the purpose. But, the intention that even use of force may be authorised can be inferred from the fact that the power is given to "a magistrate". The Magistrate may, if necessary, give intimation or notices in writing, or, where necessary, even proceed quasi-judicially and hear objections. All this could be done in exercise of an implied or incidental power flowing from the grant of power to procure surrender.

The doctrine that where a power is given to do a certain thing all that may be reasonably necessary for the exercise of that power is too well established to be capable of being questioned (see: Maxwell on "Interpretation on Statutes", 11th Edition, pages 349 to 362; Craies" Statute Law, 5th Edition. Page 238).

8. The Act was passed in 1894 for the purpose of amending the law of acquisition of land for public purposes and for companies. It pre-supposed the existence of law for acquisition of land for public purposes which was to be amended in certain respects. Looking back at the history of the law of land acquisition, we find that the earliest law dealing with land acquisition for public purposes is Regulation 1 of 1824 of the Bengal Regulations, the purpose of which is given as follows:--

"Whereas It being necessary occasionally to require the surrender of the property of individuals, for purposes of general convenience to the community, it appears expedient distinctly to define the course of proceedings to be followed in such cases, in order, that works and arrangements of public utility may not be unduly impeded, and that at the same time, a just and full compensation may be secured to all persons, holding an interest in the property so appropriated." This was applicable throughout the whole of the provinces immediately subject to the Presidency of Fort William. In 1850, Act 42 of 1850 was passed in order to give more summary powers than Regulation 1 of 1824 "for gaining immediate possession of the land needed" for the construction of railways which was then contemplated. Similar enactments for the Bombay and Madras Presidencies were separately enacted. The first Act applicable to the whole of British India was the Act 6 of 1857 the object of which is stated to be "to make better provision for the acquisition of land needed for public purposes within the territories in the possession and under the Government of the East India Company, and for the determination of the amount of compensation to be made for the same". It is here that we find, among the main, features of the Act, that the Collector could take possession of the land as soon as the award had been made and the land was henceforth to vest absolutely in the Government free from all liability or encumbrances. This feature continued through Act 2 of 1861 and Act 22 of 1863, and Act 10 of 1870 and Act 17 of 1885, and was repeated in Act 1 of 1894, the provisions of which are now under consideration.

9. A well-known method of construing statutes known as the Mischief Rule was formulated In the celebrated Heydon's case (see Craies on Statute Law, 1952 Edition at page 91). It requires us to look at the legislative history in order to discover the evil for which a remedy was designed and enacted. A consideration of the objects of the enactment, in case of difficulty. Is involved in applying this rule. There could be no doubt that, In the instant case, the object of the provisions to be construed was that the Government should be able to assert its right to the land which was to vest absolutely in it after an award u/s 11 of the Act This is what Section 16 provides. Furthermore, it is clear that Section 47 of the Act was intended to arm the Collector, as the authorized agent of the

Government, invested with magisterial powers, with power to enforce a surrender of the land to himself so that the object for which the land was acquired is not defeated. When land is acquired for a public purpose the speed with which the purpose could be served is an essential consideration for the satisfaction of the public need. Hence such an enactment is to be liberally construed and its objects should not be permitted to be defeated. To use the words employed in the famous Heydon's case:

"And then the office of all the Judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for the continuance of the mischief and pro private commodo, and to add force and life to the cure and remedy according to the true intent of the makers of the Act pro bono publico."

10. In accordance with the above-mentioned well-recognized principles even if Section 16 does not lay down the precise mode of taking possession, I am bound to construe Section 47 of the Act as supplying the power to adopt a suitable method by which surrender of possession of the land, of which the title vests in the Government after the award, can be enforced. It is not possible, in my opinion, to import into Sections 16 and 47 of the Act any limitations not authorized by the express language of these provisions. In my opinion, despite some ambiguity in Section 16 as to when the title to the land vests in the Government, that is to say, whether immediately on the making of the award or at the time when possession is taken, I think it is quite clear that the power to take possession is not affected by any such ambiguity. I am disposed to interpret the words "shall thereupon vest in the Government free from all encumbrances" as relating to the time at which the award was given u/s 11 because it is at that time that the right and title of the Government becomes clear and freed from all encumbrances. The term "encumbrances" would include such legal rights and obstacles to actual possession which may have existed such as a right of a mortgagee or of a tenant to be in actual possession. Learned counsel for the petitioners concedes that this seems to be the object of freeing the right of the Government from all encumbrances. He admits that the petitioners could not put forward any tenancy rights after the making of the award. All that is contended for the petitioners is that they have a right to continue in possession until, and unless duly evicted by a legally prescribed mode of eviction.

11. In my opinion, after an award is made, a fair and reasonable procedure for eviction is fully covered by Section 47 of the Act. There is no need for a separate suit against a trespasser. Indeed, if such a requirement were held to be necessary, it would defeat the object of Section 47 of the Act. The validity of Section 47 of the Act is not assailed on the ground that it invests the Collector with too wide a discretion so that it could be used for purposes of discrimination. The meaning of Section 47 of the Act is that, whenever the Collector is obstructed in taking actual possession of the land, in respect of which an award has been made so that the title vests absolutely in the Government as provided

by Section 16, he may take such steps as may reasonably be necessary to enforce the surrender of the land to himself. It is true that the section does not mention any notices to be given. But, the Land Acquisition Collector (respondent No. 1) in issuing notices to the petitioners and in hesitating to use actual force, as he could no doubt authorize the use of, was only acting with excessive caution. Now that it has been held by this Court that the petitioners had neither a substantive nor a procedural right as against the opposite party No. 1. invested with the magisterial power u/s 47 of the Act, there need be no such, hesitations on the part of the contesting opposite parties. The result is that I dismiss this writ petition with costs. The interim, stay is also vacated,

12. teamed counsel for the petitioners, however, prays for an order or direction staying the hands of the opposite parties until the filing of an appeal so that another interim stay may be applied for under Order 41, Rule 5, Civil Procedure Code, and obtained from this Court. I am afraid that when this Court refuses to exercise its exceptional prerogative powers under Article 226 of the Constitution, the position of a successful party is not the same as that of the holder of a decree in favour of that party. Article 226 of the Constitution is not meant for obtaining any final order granting an Interim relief only. On the petitioners' own case they are liable to be ejected by a suit in an ordinary Civil Court, In other words, all they say is that they are entitled to obstruct, by resorting to Article 226 of the Constitution, such steps as the Collector may think reasonably necessary to take u/s 47 of the Act which is, prima facie, meant for removal of impediments and obstructions. They say that this impediment can be removed, but only by means of a suit. This is nothing short of an assertion of an indefensible claim to abuse Article 226 of the Constitution which I cannot recognize. I have no doubt that the Land Acquisition Collector, opposite party No. 1, who has been quite lenient in dealing with the petitioners, will himself, if approached by the petitioners, give them a reasonable opportunity of removing themselves and their belongings from the premises which were acquired long ago for a public purpose,