

(1979) 01 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 6785 of 1976

Nar Singh Dass and Others	Vs	APPELLANT
State of Punjab and Another		RESPONDENT

Date of Decision : 23-01-1979

Acts Referred:

Land Acquisition Act, 1894 — Section 5

Citation : AIR 1979 P&H 113

Hon'ble Judges : J.M. Tandon, J

Bench : Single Bench

Judgement

1. The Government vide notifications (Annexure P. 1) dated April 18, 1972, under S. 4 read with S. 17 of the Land Acquisition Act, (hereinafter the Act) sought to acquire land of the petitioners measuring 150 kanals 2 Marlas (18 Acres 6 Kanals and 2 Marlas) in village Jandiala Guru, District Amritsar, for the storage of food grains. The Government issued another notification (Annexure P. 2) on the same date under S. 6 read with S. 17 of the Act Out of the acquired area 104 Kanals was meant to be utilised by the Food Corporation of India and the remaining by the Markfed and the State Government. The petitioners filed the present writ on Sept. 27, 1976, alleging that they had been wrongly deprived of their valuable right under S. 5A of the Act by the application of S. 17 on the ground of urgency which in fact did not exist. The non-existence of urgency stands demonstrated by the fact that the acquired land has still not been utilised for the requisite public purpose.

It has further been alleged that the District Food Controller, Amritsar, permitted them to resume possession of the acquired land during the months of June to Sept. 1975, on their furnishing affidavits that they will not claim damages. The petitioners continue to be in possession. of the land since then. The Government apparently did not apply its mind to the existence of any urgency about the proposed acquisition of the land and it was just in routine that S. 17 was mentioned in the notifications depriving the petitioners. of their right to file

objections u/s 5A of the Act against the proposed acquisition. The petitioners consequently prayed that notifications (Annexures P. 1 and P. 2) be quashed being illegal and void.

2. The State Government (respondent No. 1) raised preliminary objections that the petition was highly belated and material facts have been suppressed therein. On merits, it was stated that the possession of the entire acquired area was taken by the Food and Supplies Department through the revenue authorities on March 19, 1973, and the possession of the land which fell to the share of Food Corporation of India was given to it on April 18, 1973. The urgency of the acquisition did exist on April 18, 1973 due to shortage of availability, of godown accommodation. The affidavits were obtained from the petitioners in 1975 that they will not claim damages if the land was released. The petitioners were never permitted to resume possession of the land and they in fact are not in possession thereof. As no decision could be taken to instal open storage complexes the acquired land was not utilised.

3. The written statement on behalf of the Food Corporation of India has been submitted by the Senior Regional Manager, Chandigarh. He also raised two preliminary objections that the writ petition was highly, belated, having been filed after more than 41/2 years of the issuance of the impugned notifications and further the petitioners have made deliberately false and misleading statements therein inasmuch the State Government took possession of the acquired area on March 19, 1973, out of which the possession of 104 Kanals was given to the Food Corporation of India on April 18, 1973 and the same continues to be in their possession ever since. On merits, it was repeated that the urgency of acquisition of the land existed on account of shortage of godown accommodation for storage of bumper Rabi Crop. The acquired area was selected as it was considered more suitable for setting up of open complexes for storage of foodgrains.

The State Government or the District Food Controller had no right or authority to invite or entertain any application or affidavits of the petitioners in 1975 for restoring the land to them. The State Government did make reference to the Food Corporation of India in this respect but it was not agreed to and the Government was informed accordingly. No further action was taken by the Government thereafter, The Food Corporation of India is immediately going to raise godowns of 15,000 tons capacity for storage of food grains over the acquired land for which necessary sanction has been conveyed by the head office of, the Corporation after examining the feasibility and completion of other formalities.

4. The notifications one under S. 4 read, with Section 17 of, the Act (Annexure P. 1), and second under S. 6 read with S. 17 of the Act (Annexure P. 2) were published in the Punjab Government gazette dated April 18, 1972. The possession of the land in pursuance of these notifications was taken over by the Government on March 19, 1973. The petitioners filed the present writ on

September 27, 1976. The petition is obviously highly belated.

5. The learned counsel for the petitioner's has argued that the petitioners waited till September, 1976, to be on a strong footing to challenge the application of urgency provision under S. 17 of the Act effectively. This is hardly a Satisfactory explanation to justify the delay of 4 1/2 years in filing the petition. The omission on the part of the petitioners to challenge the notifications immediately after they were made or even when they were dispossessed in March, 1973, is suggestive that they had nothing to urge against the application of S. 17 of the Act. It being the case the writ is liable to fall on account of extraordinary delay.

6. The Government took possession of the acquired area in pursuance of notifications (Annexures P. 1 and P. 2) on March 19, 1973. According to the petitioners, the District Food Controller, Amritsar, secured affidavits from them in the months of June to September, 1975 that they will not claim damage and thereupon they were permitted to resume possession of the land. It has been categorically denied by the State Government (respondent No. 1) as also the Food Corporation of India (respondent No. 2). The State Government in its written statement filed through the Deputy Secretary to Government, Food and Supplies Department, has admitted that the affidavits were secured from the petitioners to the effect that they will not claim damages if the land was released but they were never permitted to resume possession of the land. It was asserted that the petitioners were not in possession of the land. The Food Corporation of India in the separate written statement has averred that the land measuring 104 Kanals continues to be in their possession since April 18, 1973.

It is evident that the Govt. has not given up acquisition of the land. The land was not ordered to be restored to the petitioners at any stage. In this background, the question of the District Food Controller, Amritsar, allowing the petitioners to resume possession of the acquired area in the months of June to September, 1975, did not arise especially when bulk of the acquired area (104 Kanals) was in possession of the Food Corporation of India since April 18, 1973. The averment made by the petitioners in the petition that they were in possession of the acquired area since June to September, 1975, is patently false which obviously was made deliberately with ulterior motives. The writ petition is liable to fall on this ground as well.

7. It is the consistent stand of the Government and the Food Corporation of India that there was a great urgency of setting up of open complexes for storage of food grains of bumper Babi crop on account of acute shortage of storage accommodation. There is nothing to doubt the veracity of the averments made by the respondents about the acute shortage of storage accommodation for food-grains in 1972 nor has it been controverted by the petitioners. The Government expected bumper Rabi crop in 1972 and it is difficult to condemn this assessment as misconceived. The Government does make assessment about the quantum of crop before, its arrival in the Mandis. The assessment of the Government on the eve of Rabi 1972 that the storage of bumper Rabi crop food grains was likely to

ca use actue problem cannot as well be termed unjustified or perverse. In this situation, the Government was to gear up the machinery and provide wherewithal in anticipation and thus be in, readiness immediately before the arrival of Rabi crop in the Mandis.

It is a matter of common knowledge that the Rabi food grains start pouring in the Mandis in April and flooding from May onwards. It was, therefore, natural for the Government and Food Corporation of India and other Government agencies who make bulk purchases of "food grains to start thinking of setting up of open storage complexes on account of acute shortage of godown. accommodation. The very nature of things made it imperative that the necessary arrangements, including the suitable land for setting up of open storage complexes should have been completed before hand, so that the decision in this regard if and when taken could be implemented forthwith. The final decision to stock the food grains in open storage complexes could be taken after the arrival of the food grains in the Mandis.

It was,. therefore, necessary to be In possession of land which could be utilised for open storage complexes immediately when decision to stock the food grains in the open was taken. The acquisition of land could not be postponed till the arrival of food grains in the Mandis as it may have turned out to be too late. Under these circumstances, it would be wrong to say that there was no application of mind on the part of the Government to invoke urgency provision or there was no material to justify it. The satisfaction of the Government that the land of the petitioners which was suitable for open storage complexes was urgently required was, therefore, apt and the application of Section 17 of the Act justified. In this situation the fact per se that the respondents did not or did not have to set up open storage complexes over the acquired land is hardly relevant.

8. In the result, the writ fails and is dismissed with costs.

9. Petition dismissed.