

(2000) 02 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 4943 of 1999

Narang Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 22-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 17, 17(1), 17(2), 17(4), 2(1)

Citation : (2001) 1 ILR (P&H) 68 : (2000) 3 RCR(Civil) 269

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

Bench : Division Bench

Advocate : M.L. Sharma, for the Appellant; Gurminder Singh, DAG for Respondents No. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—By a notification published in the official gazette on 16th January, 1998 u/s 4 of the Land Acquisition Act, 1894 (as amended upto date and hereinafter called the Act), the State of Punjab sought to acquire an area of 5.15 acres of land in village Soonk, Tehsil Kharar, District Ropar for a public purpose namely for the construction of a residential colony in the village. The construction of the residential colony is a World Bank Aided Project undertaken by the Punjab Irrigation and Drainage Department. The urgency provisions under Clause (c) of Sub-section (2) of Section 17 of the Act as introduced in the State of Punjab were invoked on the ground that the land was urgently required for immediate construction/completion of the Project as per schedule and it was declared that the provisions of Section 5-A of the Act shall not apply to the acquisition. As required by Section 4, the notification was also published in the Daily Tribune and the Daily Ajeet on 2nd February, 1998. Public notice of the substance of the notification was also given in the locality. Thereafter, the State Government made a declaration to the effect that the land referred to in the notification u/s 4 was needed for the public purpose mentioned therein and this declaration was made on 23rd January, 1998 by publishing the same in the official gazette. The

notification u/s 4 of the Act and the declaration made u/s 6 have been challenged in this petition filed under Article 226 of the Constitution.

2. The Primary argument of the counsel for the Petitioners is that the notification u/s 4 of the Act having been published in the two newspapers on 2nd February, 1998 and in the official gazette on 16th January, 1998 the date of its publication will have to be taken as 2nd February, 1998 and therefore, the declaration made u/s 6 on 23rd January, 1998 is illegal as it could not be made prior to the date of publication of the notification. Learned Deputy Advocate General, on the other hand, contended that Section 6 of the Act nowhere requires that the declaration cannot be made prior to the publication of the notification u/s 4 of the Act and that the only embargo is that it cannot be made after the expiry of one year from the date of publication of the notification u/s 4. The argument indeed is that the provisions of Section 6 (1) only prescribe the outer limit beyond which the declaration u/s 6 cannot be made but it can be made at any time before expiry of that period even prior to the publication of the notification u/s 4. It was also urged by the learned State counsel that in the present case the provisions of urgency u/s 17(4) had been invoked and it was declared that the provisions of Section 5-A shall not apply to the acquisition and, therefore, the Petitioners were not prejudiced in any manner with the publication of declaration prior to the date of publication of the notification u/s 4 of the Act.

3. From the rival contentions of the parties, the question that arises for our consideration is whether a declaration u/s 6 can be made prior to the date of publication of the notification u/s 4 of the Act. Before we deal with this question, it is necessary to refer to the relevant provisions of Sections 4(1), 5-A, 6 (1) and 17 of the Act which are reproduced hereunder for facility of reference:

4. Publication of preliminary notification and powers of officers thereupon:

(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, or for a company a notification to that effect shall be published in the official Gazette, and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.

5-A. Hearing of objections.

(1) Any person interested in any land which has been notified u/s 4 Sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under Sub-section(I) shall be made to the Collector in writing and the Collector shall give the objector an opportunity of being heard in person

or by any person authorised by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified u/s 4, Sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision, of that Government. The decision of the appropriate Government on the objections shall be final.

6. Declaration that land is required for a public purpose.

(1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made u/s 5-A Sub-section (2) that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification u/s 4 Sub-section(I), irrespective of whether one report or different reports has or have been made wherever required u/s 5-A Sub-section (2).

Provided that no declaration in respect of any particular land covered by a notification u/s 4 Sub-section (1):

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, but before the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

17. Special powers in cases of urgency--

(4) In the case of any land to which, in the opinion of the appropriate Government the provisions of Sub-section(I) or Sub-section(2) are applicable the appropriate Government may direct that the provisions of Section (2) are applicable the appropriate Government may direct that the provisions of Section 5-A shall not apply and if it does so direct, a declaration may be made u/s 6 in respect of land at any time after the date of the publication of the notification u/s 4 Sub-section (1).

4. A bare reading of the aforesaid provisions would show that whenever it appears to the State Government that the land is needed or likely to be needed

for any public purpose, it has to publish its intention by a notification to that effect in the official gazette. This notification is required to be published in two daily newspapers circulating in the locality and public notice of the substance of the notification is also required to be given at convenient places in the said locality. The publication of the notification can be on different dates. In a given case, it may be published on four different dates and it is for this reason that Section 4 itself prescribes that the last of the dates of such publication would be taken as the date of the publication of the notification. If the urgency provisions are not invoked, the persons interested in the land which has been notified u/s 4 have a right to object to the acquisition of the land and they can file objections in writing within thirty days from the date of the publication of the notification and the Collector after holding an inquiry as he thinks necessary and after affording an opportunity of hearing to the objectors is required to submit his report to the State Government alongwith his recommendations in regard to the objections. The State Government then on a consideration of that report or reports if they are more than one decides whether the land is to be acquired or not and whether any part of it is to be released and if it decides to acquire the whole or any part thereof, a declaration is made u/s 6(1) which is also required to be published in the official gazette and in two newspapers. Public notice of the substance of the declaration is also given in the locality. The proviso to Section 6(1) provides that no declaration can be made after the expiry of one year from the date of the publication of the notification u/s 4. The declaration made u/s 6 is conclusive evidence that the land is needed for a public purpose and after such a declaration the appropriate Government may acquire the same in accordance with the procedure prescribed thereafter. It is thus clear that the declaration u/s 6 is made only after the State Government has considered the report of the Collector who in turn had afforded an opportunity of hearing to the objectors and made his recommendations to the State Government. If the declaration u/s 6 were to be made prior to the date of the publication of the notification u/s 4, the land owners would be deprived of their right to file objections which is a very valuable right because such objections can be filed within thirty days from the date of publication of the notification u/s 4 which is last of the dates of such publication. This cannot be the intention of the law. In a case like the present one, where the land is urgently required, the State Government may direct the Collector to take possession of the land on the expiry of fifteen days from the publication of the notice mentioned in Section 9(1) even though no award has been made by the collector. Sub-section (2) of Section 17 of the Act as amended in Punjab provides that whenever land is required which, in the opinion of the Government is of urgent importance the Collector can immediately take possession after publication of the notice mentioned in Sub-section(I) of Section 17 with previous sanction of the State Government and the land absolutely vests in the Government free from all encumbrances. Sub-section(4) of Section 17 then provides that where land is urgently required the State Government may direct that the provisions of Section 5-A shall not apply and where it so directs, a declaration may be made u/s 6 in respect of that land at any time after the date

of publication of the notification u/s 4(1) of the Act. Even in cases where urgency provisions are invoked the statute itself provides that land owners may not be allowed to file their objections but the declaration u/s 6(1) shall be made after the date of the publication of the notification. Language used in Sub-section (4) of Section 17 is clear and mandatory in nature and the word after used therein makes it abundantly clear that even in the case of urgency declaration u/s 6 is not to be made before the date of publication of the notification. That would be contrary to the provisions of Sub-section (4) of Section 17 and clearly impermissible. It must thus be held that the declaration u/s 6 of the Act cannot be made prior to the date of publication of the notification u/s 4 of the Act. The question posed in the earlier part of the judgment has to be declaration u/s 6 was made on 23rd January, 1998 whereas notification u/s 4 was published in two newspapers on 2nd February, 1998 which has to be taken as the date of its publication. Since the declaration u/s 6(1) was made prior to the date of publication of the notification u/s 4, which is contrary to the scheme of the Act, the same cannot be sustained.

5. In the result, the writ petition is allowed and the declaration published on 23rd January 1998 quashed. It will, however, be open to the Respondents to proceed in accordance with law. There is no order as to costs.