
(1983) 11 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2057 of 1976

Nathe Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 10-11-1983

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (1983) 11 P&H CK 0054

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : H.L. Sarin with Mr. M.L. Sarin, for the Appellant; H.R. Bansal, for the Respondent

Final Decision : Allowed

Judgement

I.S. Tiwana, J.—The two notifications (Annexures P-1 and P-2) dated 2nd February, 1977, issued under Sections 4 and 6 of the Land Acquisition Act (for short, the Act), respectively, are impugned primarily on the grounds-

(i) that Section 4 of the Act has not been complied with inasmuch as the substance of the first notification, u/s 4 of the Act, was not published in the locality concerned simultaneously or without undue loss of time from the publication of the said notification in the official gazette; and

(ii) that the provisions of Section 17 of the Act have wrongly been invoked without any application of mind.

The case as set up by the Respondent-authorities is that the substance of the notification u/s 4 of the Act was got proclaimed in the locality concerned through the village panchayat on 11th February, 1977 and a copy of the resolution of the Panchayat to that effect is annexed as D-1 to the Written Statement of Respondent No. 4. With regard to the second challenge it is stated that the Government invoked the provisions of Section 17 of the Act after fully satisfying itself about the urgency of the matter. It deserves to be mentioned here that the

land in question has been acquired for providing house sites to the landless workers of the Village and inspite of invoking the urgency provisions, the Petitioners were not dispossessed of the said land till the date of the filing of this petition, i.e. 15th July, 1978.

2. After hearing the Learned Counsel for the parties I find no merit in the stand taken by the Respondents.

3. Firstly, it is difficult to accept in the light of the contents of Annexure D-1 that as a matter of fact there has been any publication of the substance of the notification issued u/s 4 of the Act. All that this resolution of the Panchayat says after referring to the factum of the issuance of the two notifications is "resolved that Mushtari Munadi should be done in this respect in the village by Chowkidar." Besides this, there is no record to show that either this resolution of the Panchayat was carried out or that the publication about the substance of the notification u/s 4 of the Act was, as a matter of fact, made in the village or the locality concerned. Thus, the Petitioner deserves to succeed on this ground alone.

4. So far as the second contention of the Learned Counsel for the Petitioner is concerned, though the stand of the Respondent-authorities, as already indicated, is that the urgency provisions of Section 17 had been invoked after giving due consideration to the matter, yet the said case stands negatived by the irrefutable circumstance that for about 1 1/2 years, i.e., from the date of the publication of the notification in the gazette to the date of the filing of this petition, viz., 15th July, 1978, the authorities failed to take possession of the suit land or take any meaningful step towards the completion of the acquisition proceedings by making an award, etc. A Division Bench of this Court in *Sh Mehtab Chand v. The State of Punjab* 1976 P.L.J. 104 has ruled that "where there is no evidence worth the name to show that the Government ever applied its mind to the question as to whether there was any urgency justifying abridgement of the normal procedure embodied in Section 5A and no attempt is made to take possession for a long time, both the things would unmistakably show that there was no urgency in fact and the provisions of Section 5A were dispensed with only as a colourable exercise of jurisdiction, and the notification in such a case should be held to be bad in law." The ratio of this judgment, to my mind, fully applies to the facts of this case.

5. In the light of the above I allow this petition and quash the impugned notifications Annexures P-1 and P-2 to far as these relate to the Petitioner, with costs which I determine at Rs. 300/-.